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ABSTRACT

Photocopying and other topics are presented in Vols. 1 and 2 of the transcript of the Ninth Commission Meeting held in Arlington, Virginia in 1976. Topics in Vol. 1 include: (1) implications for the commission's work of the final provisions of the copyright bill; (2) study of a national periodical bank(s) for the U.S.; (3) the provision of photocopies by the National Library of Medicine and its regional medical libraries. Charts of the hierarchical network of the Regional Medical Libraries and the U.S. MEDLINE centers are included. Vol. 2 examines: (1) the lending and photocopying activities of the Center for Research Libraries, including the arrangement for securing photocopies of periodical articles from the British Library Lending Division; (2) the photocopying activities of the Linda Hall Library for scientific and technical materials; and (3) the activities and future plans of the British Library Lending Division. (Author/AP)

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NINTH MEETING

VOLUME ONE

TRANSCRIPT OF PROCEEDINGS

Place: Arlington, Virginia

Date: October 21, 1976

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Ninth Meeting

Room 910
Crystal Mall Building No. 2
Arlington, Virginia

THURSDAY, October 21, 1976

BEFORE: The National Commission on New Technological Uses of Copyrighted Works

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JUDGE FULD: Ladies and gentlemen, Members of the Commission:

During the course of this, our ninth Commission meeting, we will shift our attention from the impact of computer technology on private rights and on public access, and from works of authorship, as exemplified by Computer Programs and Data Bases, to photocopying.

Since last we met, both the Senate and the House of Representatives passed the Conference-approved version of the Copyright Revision Bill, which the President signed into law on Tuesday.

The guidelines on inter-library photocopying have been agreed upon by the concerned parties, and adopted in the Conference Report accompanying the Revision Bill -- largely through the efforts of this Commission. It is but a forerunner to our present task.

Today and tomorrow, we shall address the broader issues presented by the impact of photo-duplication of works of authorship upon authors' and publishers' rights, and upon the information requirements of the general public.

We are fortunate to have with us, these next two days, representatives of major resource libraries, whose function entails the nation-wide -- indeed, world-wide -- dissemination of materials and their collections.

We will hear, also, from representatives of research

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organizations currently engaged in carefully modeled economic studies of library lending and photo-copying practices and, in one case, a study of the feasibility of a royalty payment system for photo-copying which occurs in large resource centers.

We look forward to gathering from their presentation, the information we need to formulate the Commission's recommendations in this area.

We are privileged to have, as our first speaker, the Register of Copyrights, who will talk to us on the implications of the law that has just been passed.

Ms. Ringer.

IMPLICATIONS OF THE FINAL PROVISIONS OF THE
COPYRIGHT BILL FOR THE WORK OF THE COMMISSION
BY
MS. BARBARA RINGER
REGISTER OF COPYRIGHTS

MS. RINGER: Thank you, Judge Fuld.

I don't have anything very formal prepared and, obviously, we are still bouncing a bit from the last week or two. But I thought I would give you some very preliminary run-down on what is immediately facing us, and then leave what time remains to questions. I am sure you have some questions. Maybe some of the things that I say will prompt some questions and, if you have others, don't hesitate to ask them.

I do think that I should say at the beginning that I don't think final action on revision would have been possible -- at least not without a great deal more difficulty -- without the efforts of this Commission. The results were not only positive but, perhaps even, decisive. And I am not sure that the legislators are fully aware of what went into it.

I will try to get this across, and I think others should do the same, because this was something that just did not arrive out of thin air. The guidelines on photocopying were carefully worked out, and as a result I believe they will have lasting importance including the laying out of the basis for practices that will go on perhaps, towards the end of the century.

In any case, the Bill was signed on Tuesday night, October 19, at about 10:00 o'clock, I am told, and it bears the effective date of October 19, 1978. There are certain provisions that, theoretically, at least, come into effect immediately; they are now in effect. They are identified in the new law expressly and include the Copyright Royalty Tribunal. In other words, the potentiality of the Tribunal now exists. As soon as the Congress or the Senate confirms it, it will be in existence; and its presence is now with us.

Moreover, the extentions of copyrights -- subsisting copyrights -- are now in effect and, theoretically, the provisions of Section 118 on Public Broadcasting are also in effect.

Then there are actions that people can be preparing for that will take effect immediately on January 1, 1978 -- which is the actual effective date of the law.

We, in effect, have a little over 14 months to get ready for these enormous changes. The "we" I refer to includes the Copyright Bar and all of the interests and individuals affected by the Copyright Law, such as copyright owners, authors, users, as well as the Copyright Office. I am, at the moment, very much preoccupied with what the Copyright Office, itself, is going to have to do, to implement this law.

If you will bear with me, I will try to talk a little bit about this, because it is uppermost in my mind. I may tell you more than you want to know on this particular subject.

JUDGE FULD: I am sure you will not.

MS. RINGER: Wait and see.

In any case, I think that we are now finding ourselves in the position where, suddenly, people are looking at the provisions of the new law closely for the first time, and are finding all sorts of things that they did not know were there. They have been there all along, but people have been concerned with the large controversial issues, and, actually, many people closely involved with this new legislation have not read it from cover to cover in quite some time and a lot of questions are going to be asked--and are being asked now. I am hoping that this process is already under way and will be carried forward by this meeting this morning.

The law, of course, is a general revision in the sense that it touches every aspect of Copyright Law; and it is also a complete revision in the sense that it changes practically every aspect of the Copyright Law. In certain important ways, these changes are fundamental.

I know that most of you know all of this, but let me just run

down some of the major changes.

The most important changes, I would say, lie in the concept of a single Federal System, the term of copyright, the divisibility of copyright, the rights of termination, and the formalities. I would say that, in those five areas, the most fundamental changes have been made.

We will have a single Federal System of Copyright. It is no longer technically correct to speak about "copyrighting something", or "something being copyrighted," because, as of the effective date of the law, everything is going to be under copyright that is potentially copyrightable. This means that the created product is a work of an author, a work of authorship, an original work of authorship that is fixed in some kind of tangible form. The minute this work comes into existence it will be protected without any formalities. The extent of protection depends on other factors, but the fact remains that the work will be protected -- from the time of its creation.

This, I think, is something that the people have accepted intellectually, but have not yet really adapted themselves to -- we may have many questions from puzzled people, such as "What do I do to secure a copyright under this new law?"

The point is one doesn't have to do anything. One simply creates the work. What is done then to enhance one's rights--or protect them in some respects--depends on other factors.

The protection will be for the life of the author, plus fifty years, in most cases, although this has many qualifications. The works made for hire will have a different term; anonymous and pseudonymous

works will have a different term--unless the authorship is revealed.

This will apply only to works that are neither presently copyrighted, nor presently created. Nor -- let me see if I am saying this right -- "presently in the public domain." In other words, works in the public domain will not be resurrected. They will still remain in the public domain. The new law has no retroactive effect.

Works that are created after January 1, 1978, will be protected for the life of the author plus fifty years--unless they fall into these corporate or anomalous categories. Works that are created but not yet under copyright and not yet in the public domain will also receive the life--plus 50 years -- or variant terms -- unless those terms would have expired.

There are a gigantic quantity -- millions and millions, perhaps billions -- of works out there that are potentially capable of being protected by copyright. But, if life-plus-fifty, or a 100-year-from-creation term is attached to them, they would fall into the public domain the minute the new Act came into effect. What the new Act does is to give those works a minimum term -- in effect, 25 years from the effective date, plus an additional 25 years if they are published within that 25 years. There is an inducement to publish them. This is done for reasons of due process. One doesn't want a blood bath where everything falls into the public domain the minute the law comes into effect.

Copyright under the new law is completely divisible, and this is something that is going to take a lot of getting used to. Already, we are getting questions about, "What does this mean" in individual cases. What it means is that you can divide copyright ownership

indefinitely. Everyone who has exclusive rights is an owner to the extent of that exclusive right, but the author -- the individual author -- retains any rights that he or she does not transfer. And I think that this is already beginning to worry some people. This is, now, something of a different ball game.

One has rights in the individual authorship from the moment of creation. It is not necessary to do anything. Or to go to anyone. These rights are completely divisible, and one doesn't have to sell all of the rights. One can retain any rights that he or she doesn't want to sell.

In addition, there is a right of termination. Assignments that are made by an individual author of rights of any sort can be terminated after 35 years, with varying qualifications. Terminology is optional but, once it takes place, then the rights that are terminated revert-- I won't get into the complications of this. These are many and varied and I think that this will become a very important factor in years to come.

The basic provision applies only to transfers made after the effective date of the new law, so I would suspect that, within the next year, people will start doing all kinds of studies of their contracts, on both sides -- authors and publishers, and other users. But immediately -- now, in effect -- there is a termination rignt that can be exercised in futuro. This is with respect to the remaining 19 years, or less, of subsisting copyrights -- the last 19 years that are being added under this new law. This is complicated, I know, but I am trying to give a general idea of the framework of the new law. Then I hope you

can ask me questions, if you are puzzled about anything.

The new law adds to subsisting copyrights, 19 years, in general.

Let me run this down:

For works -- subsisting copyrights in their first term -- one has to renew. There is still the 28-year first term and the renewal requirement. (If you want to know the reasons for any of this, I will tell you later what the reasons were, but I will just tell you what the law says at this point.)

If one renews, he or she gets, at the proper time -- which is the last year of the original term -- an additional term which, under the present law, is 28 years -- the second term is 28 years. Under the new law, it will be 47 years, thus bringing the total term up to 75 years.

If the copyright, on the effective date of the new law, is in its second term, and it has already been renewed, one gets the 47 years without any additional renewal -- the additional 19 years are added on to the term that you already have.

Now, in both of those cases, the author or certain of the author's heirs -- reclaims the last 19 years. The framework is very similar to the termination provisions that apply in the future. There are certain time limits and requirements as to how one goes about claiming this but, as I read the new law, notices can be filed right now with respect to reclaiming what is left of that 19 years.

Now, there is a wrinkle here, which I won't go into much detail on: Theoretically, what you are claiming is anything more than 56 years but, since 1962, Congress has been extending, regularly,

expiring renewals. So there are some works that go back to 1906. Those are not going to get 19 years. They are only going to get five years additional. But you can reclaim that five years, if it is worth the bother, and you can reclaim anything up to 19 years for anything that is more recent that 1906.

I am sure I have left you all in great doubt. But let me say, without any qualification, that this is very, very, important to some people in the music industry. They have very valuable copyrights, and they are very conscious of this. I think they are already prepared to file these terminations. I think we are going to hear a good deal more about this.

Finally, the formalities of copyright notice, deposit, and registration: These are retained, but greatly liberalized. I will go into a little more detail on this because this is, obviously, the day-to-day work in the copyright area -- at least, vis-a-vis the Copyright Office:

The provisions that I have mentioned thus far are really, the heart of the new law, and many of them -- as many of you here know -- were extremely controversial at one time, but they were pretty well settled by the time the bill was introduced in 1964. There has been very little change in substance in these provisions since then.

For the last 12 years, the controversies have raged over the scope of exclusive rights -- the big publishing-related issues, such as the one you have been wrestling with, and the big money issues such as cable television, juke boxes, and the royalties for making sound recordings. I don't see much point in going through these in detail here. I will answer any questions about them, but

it doesn't seem profitable to go through the nuts-and-bolts of the cable television compulsory license for our purposes here.

It is important, as I have indicated earlier, that the search for an acceptable solution to the educational and library photocopying issues caused the interests involved to sit down together and try to work out some sort of accommodation that could be translated into writing and provide guidance for the future. This was true not only in the area with which the Commission has been pre-occupied but also in the classroom and music areas.

I am getting a kind of an equivocal reaction in discussing this with various groups. In some ways, it is a tribute to what had come out of all of this--that people are uncertain whether they ought to be happy about it or not. I have gotten this very reaction from educators and from librarians -- within the last day, actually. I would say that a major effort will have to be made by professional people in these various areas, not necessarily to "sell" these guidelines, but to explain them, and make clear what they mean and what they don't mean--and why people should not be afraid of them.

There has been, obviously, a lot of scare talk -- and there are still some who are dissatisfied with what came out of this. However, I believe that most people are fairly content with what came out of it. They recognize that it is far better than anything that had been discuseed earlier. They recognize that none of this is engraved in stone, to coin a phrase, and that there will be oversight both of this Office and by Congress over how this is all working. It seems to me that this is a very healthy thing, but it is, also apparent to me that we have to

go out and talk to people about all of this. The library community and this Commission, if possible, together with publishers and authors, are going to have to engage in a constant dialogue on this, and there are, obviously, other things going on in this whole field that bear on this. There are talks about blanket licensing that are beginning to emerge in public broadcasting, among other things. I think all of this needs to be tied together.

The accommodations that have been worked out on the money issues are really quite remarkable. I still draw my breath when I think about what came out of "cable". I could not have imagined it a year ago.

I guess these things -- as I said elsewhere -- have a rhythm of their own, and that, somehow, the time had just come for an agreement to emerge on this, although it was not that simple. The time just had not been ripe within the legal and economic framework until now. But a lot of effort had to go into this, and there are some people in both the cable and the motion picture industry -- and I might add, the broadcasting industry -- that deserve real credit for statesmanship.

In any case, what we have in the law in these "rights" areas is a complicated skein of the exclusive-rights exemptions, compulsory licensing, and something else that has not been given much attention but of which I am very conscious: mandates for the Copyright Office to make studies on various issues. This really amounts to provisions for handling unfinished business -- requirements for the Copyright Office to make studies at specific intervals or on specific dates--of some of these more problematical issues.

One of them, as you know, is library photocopying, and that

study will have to take place five years after the law comes into effect but, in addition to this, the Register of Copyrights is required in rather short time limits, to make studies and recommendations with respect to performing rights in records, public broadcasting, and non-dramatic literary works. And recently, as a result of various pressures, I was asked to have the Copyright Office --make a report as to how the economic situation looks on the date of the phase-out of the Manufacturing Clause.

I am a little puzzled by this since this clause will expire on that date and there will not be time to rescue anybody but, nevertheless, this is something that we have to do.

There are four compulsory licensing schemes: The old, traditional, mechanical royalty for making sound recordings of music, which has been changed in its procedure, although, in its basic framework it is about the same, and which did manage to get the royalty up from two cents to two-and-three-quarter cents--or a half cent per minute of playing time, whichever is more. It was certainly clear from a long way back that we were not going to get rid of that compulsory license.

Second was Cable Television -- an extraordinarily complicated provision. It runs 20 pages in the Committee Print. I would say that it will work. It is very, very difficult for anybody to understand, but it seems to me that it holds water and that is, I think, about as much as you can say for something which is as much Communications Law as it is Copyright Law.

Then there is the juke box $8.00 royalty fee, with extraordinarily difficult recording requirements, and public broadcasting, which no longer contains the non dramatic literary work requirement, but does

mandate the Copyright Royalty Tribunal under certain provisions to establish not only the rates but, also, the terms and the rates de novo of public broadcasting rights in music and graphic works. This concerns the use of pictures, photographs, and graphics on public television. The hope there -- and I am rather optimistic about it -- is that the parties will be able to work out not only for literary works, which are not included in the Royalty Tribunal requirement, but also in the area of music and graphics, some sort of voluntary arrangements, so that the role of the Tribunal would not be the be-all and end-all. The Tribunal would rather endorse agreements, rather than establish rates. This remains to be seen, and it is going to be difficult.

Those are the four compulsory licensing provisions. All four are different. All four are tied in, in one way or another, with the Royalty Tribunal or commission. It was called "Commission" in the House version, and the Members are going to be called Commissioners, although the name went back to "Tribunal." In varying situations in all four cases, the Tribunal would review rates at future times and re-establish rates, either higher or lower, depending on what is found. In two instances -- cable and juke box -- the Tribunal would settle disputes over payments to copyright owners. My guess is that there would not be many disputes in "juke box" among the owners, but I am suspecting that the Tribunal will have a lot of work to do in distributing the fees on "cable". All of this, obviously, is a major departure in American copyright law, and it is certain to lead in new directions. I think you all see the implications of this.

Now, people have been so bemused by the glamourous issues -- these big public and money issues -- that they are only now beginning to look at how this is going to affect them on a day-to-day basis. It is fair to say that only a handful of people, so far, have any notion of the revolutionary changes that are going to have to be made in the way copyright business is conducted in music firms, in record companies, and in publishing firms, and the way individual authors deal with their contracts, and so forth.

I can perhaps approach this best -- at least, certainly from my point of view -- by trying to see what the Copyright Office is going to try to do in the next year. Obviously, we are going to have to try to handle our present work load, which is very substantial and which is increasing, and, at the same time, we are going to have to prepare to change every single thing we do, and to change all of the ways in which we do it. There is really nothing in this Office that is going to be untouched by this Bill. To do this, we are going to have to educate ourselves, first. This is a process we have started and we are going to have to continue vigorously. Then we are going to have to educate the public, including all of the interests that we deal with, in a way that minimizes the confusion that is certain to occur and that avoids any catastrophe on January 1978, of a procedural and administrative nature.

There are traps in all of this, and I think it is incumbent on us to try to minimize the dangers of people falling into these traps. This is going to mean a massive educational effort.

Under the law, the mechanics, in a number of respects, are left to Copyright Office regulations, and, after or concurrent with this

educational process, we are going to have to start, right away, writing regulations.

We are now, under the new law, subject to the Administrative Procedures Act, and I am very happy about that. It seems to me a very healthy development. But it does mean -- and I think we would have done it anyway -- but it is certain now that we are going to have to have consultations. I think this would go beyond a formal procedure, but would include informal contracts to the extent that we have time and can arrange for them. My determination is to do everything as openly as it is possible to do it, although I am well aware that we don't have a lot of time, and that what I am describing is going to be time-consuming.

Part of this, obviously is an adjunct or corollary to the regulations -- our Compendium of Copyright Office Practices, our examining manual, so to speak. This will have to be revised from stem to stern. It is not yet complete and I think in the process, we should complete it. We may have consultations of some sort on that, too. Of course, if we are going to do this, we have to do it all soon in order that we can go through this refining process that will be required. It may be that certain draft statements can be published for comment before we finally issue them.

There will be, of course, major changes in our work flow procedures and our examining procedures. Every form that we use -- not just our application forms, but every general form that we use -- will have to be changed. I would say that probably one of the most immediate and dramatic changes will involve the registration for unpublished works. Under the 1909 law we are limited with respect to the classes of unpublished

works that we can register in unpublished form. The largest is music. The ratio between published and unpublished in music is ten-to-one. About ten unpublished compositions are registered for every published composition registered.

Of course, by taking any restrictions off of the classes of unpublished works that we can register, we are not going to be, potentially, registering a great mass of unpublished, non-dramatic literary works which is, of course, the form most people use to express themselves, i.e. written prose, or poetry. We will be registering great masses of unpublished poetry, articles, short stories, monographs, what-have-you -- fiction, non-fiction, of all sorts -- and it is very unpredictable just what the work load will be here, either immediately, or in the future. It takes a while for this sort of thing to catch up with people. I don't expect that the wave will crest right away. But I would suspect that the ten-to-one ratio -- or, probably greater ratio -- will probably prevail here, eventually, and this will be a very major workload item.

We will, obviously, have to redesign our application forms; and this is a difficult area to talk about, because we are so far from any real hard decisions. It seems clear that we have to call on automation to help us but, at the same time, I am very anxious not to let that dictate the form of the application -- or the way to handle it. I would like -- it is a truism, but it is certainly something I feel very strongly -- I would like automation to help us, but I don't want it to be the master rather than the slave. I am not prepared to make decisions on the basis of machine requirements. I am going to make decisions -- to the extent that it is humanly possible to do so -- on the basis of substantive considerations and not technical considerations, and I foresee some problems about this. I could go on in this vein, but I think that is enough and, if there are

people here from the Copyright Office, I hope they are sufficiently scared.

Let me talk a little bit about the changes in formalities that will affect the Copyright Office and those who deal with the Copyright Office. As I said, all works will be registerable, whether published or unpublished. Registration for both published and unpublished works will be voluntary, but fairly strongly induced and, perhaps, more strongly induced than under the present law. Everything will be under a Federal Copyright. At the present time, a large number of works are unpublished works. They were previously protected under State common law.

Under the new law one still will have to get a registration in order to bring an infringement suit, and in an infringement suit, unless you have registered, you cannot obtain statutory damages, or attorney's fees. So that unless one can prove actual damages in profits, which is usually very difficult if not impossible to prove in a copyright infringement suit, one would only be getting an injunction, really, against future uses, unless one registers. This is a strong inducement. It is not that much of a change from the present law, because it is the same situation that one has now under the common law of the State. You cannot get statutory damages, or attorneys' fees, in infringment actions involving common law copyright, now.

There are other inducements under the new law. Unless you have registered within five years after publication for a published work, the Certificate of Registration is not necessarily prima facie evidence of anything. It is only such evidence as the Court chooses to make it. Up to five years, the Certificate gives one prima facie proof. In other words, in bringing an action, one does not have to prove anything that the Certificate says; and the law also adds something that the Courts have

established under the present law: that the Certificate is prima facie evidence -- refutable evidence -- of the validity of the copyright itself and, thus, the Certificate is a valuable document. It is not only a passport to get one into Court, but it will provide for statutory damages, and attorneys' fees, if infringement is proved. There are other advantages, too, but I won't get into them now.

The Bill no longer makes copyright notice an absolute requirement for copyright in published works. As you know, under the present law, the presence or absence of the copyright notice on published works determines whether or not it is protected by the statutory copyright - or is or is not in the public domain. If a notice is omitted, even inadvertently, of a copyright -- a whole edition of a copyrighted work -- the copyright is lost. The work enters the public domain, and the copyright cannot be retrieved.

Under the new law -- and I wish it were written a little better, but I will give you my interpretation of it -- the notice requirement still exists, but for errors or even for a deliberate omission under certain circumstances, there are things one can do to correct the error -- with protection for innocent infringers who are misled by the omission, or error. If a notice is so fouled up that it is considered "no notice"; or if it is omitted entirely from a few copies -- from just occasional copies -- you don't need to worry at all. The law will protect you. If you leave it off of more than a few copies, you have five years in which to register a claim. If you register within the five years -- subject to the rights of innocent infringers who have been misled -- you are protected as long as you add notice to future copies.

Now, the new law seems to adopt a kind of subjective standard. It says, "As long as you have added notice to all copies -- made a

reasonable effort to add notice to copies after the omission, or error was discovered...". Now, I would interpret this to mean that is is a case that a Court would have to decide. This is not something that the Copyright Office would, ever, judge.

We will be registering, in the Copyright Office, claims based on the deposit of copies that do not have any notice on them. I think that is pretty clear. What we would try to do, in that situation, is lay out to the Claimant what he has to do in order to correct his error and then, if he does it, fine. If he does not, then it is up to a Court to decide whether or not he has satisfied the requirement.

"Deposit" and "registration" are two separate requirements under this new law. The Register of Copyrights is given the responsibility of insuring that the Library of Congress receives all of the copies of published works -- works published in the United States -- with the copyright notice that it wishes. This is one of the first things about which we are going to have to start consulting with the Library of Congress officials: what types of work they don't want at all. What types of work they don't want everything of; and what types of work they do want everything of. And then, we will attempt to write regulations that will give guidance to the public.

Now, theoretically, within categories where our regulations say, "The Library wants everything", there is an obligation to deposit within three months after publication with the Copyright Notice in the United States, (and this is including the first U.S. publication of foreign works if they bear a Copyright Notice) the Library is entitled, as a general rule, to two copies.

All sorts of exceptions and adjustments for individual cases can be made and, if the deposit is not made, the copyright is not lost; but

the Register of Copyrights is entitled to make a formal demand and, if the demand is not complied with, then there is a schedule of fines which can be increased if there is simply a "scoff-law" attitude--if people just simply, deliberately, and willfully do not deposit.

I would assume -- and this is one of the big inducements for registration -- that in the bulk of ordinary day-to-day copyright business, people will make registration and deposit together, because the mandatory deposit requirements can be used to fulfill the voluntary registration requirements which include the same deposit requirements in most cases: two copies of a published work, or one copy of an unpublished work.

If registration is not made at the time of deposit, the deposit copies cannot be used for that purpose. One would have to make an additional deposit later. I think most people would regard this as a nuisance and would, probably, not try to divide the two. But we will, in the Office, have to set up separate procedures for handling separate deposits where there is no registration with them.

There are a number of other record-keeping duties imposed on the Copyright Office; and I will only mention a few. We have, now, a fairly substantial operation, similar to the activity of a Register of Deeds, whereby we record a range of documents, primarily copyright assignments, but also any other document bearing on the ownership or the status of the copyright. I think that the provisions is the new law are better than those of the old law and will, I think, give the public a much better idea of what they have to record and what they do not have to record, and of the consequences of failure to record within certain time limits.

There is another rather interesting record, which I might mention: We are now keeping bio-bibliographical records of authors as part of our Reference/Search operation.

Under the new law, we are obliged to continue doing this and to expand it. We are, really, keeping obituary records; we are to record any documents concerning whether an author is alive or dead at a particular time that anyone chooses to send in such information, so that we are going to have to evolve forms for this purpose.

There are other records that we have to keep in connection with the Manufacturing Clause, but I won't get into them now.

I think I should mention, however, two rather major operations that are completely new. They are tied in with these compulsory licenses for juke box and cable. Under the Juke Box section of the new law, it is required that, during the month of January, all juke box operators in the country have to record themselves in the Copyright Office, together with the filing of an application for a license for each juke box that they own with a fee of $8.00 to accompany this application. I don't remember, exactly, what the time limits are here, but I think that within 20 days after we receive the application for each individual juke box, we have to issue a license. And these all have to be posted annually on March first and, if an employee of, for example, ASCAP or BMI goes into a cafe on March second, and finds there is no current license and that they are playing ASCAP or BMI music, then, theoretically, there is clear-cut cause of action for copyright infringement -- full liability -- $250 or whatever. The information that has to be included in the application for the license is modest. I don't think it is going to be very complicated. It is very conjectural as to just how much of a work load this will be.

We really don't know how many juke boxes there are in the United States. The figures that we heard ten years ago were "around 500,000." Apparently, it is considerably less than that now. And it has even been predicted that we will get even less than 100,000 applications during the first go-around. At that point, obviously, you are not going to have everyone licensed--and there will have to be litigation.

We are not going to be policing this in the Copyright Office. This is not our function. This is done by the individual copyright owners or their representatives -- primarily, the Performing Rights Societies. And, yet, we have to hold up our end, and we are going to have to give as much public information to the juke box industry as possible, so they don't inadvertently get caught in a trap where they are completely liable.

The cable operation involves substantially fewer numbers. There are, I would say, about 3,800 cable systems in the United States, but they are going to have to provide a great deal more complex information than the juke box industry -- infinitely more complex. They are going to have to divide up the channels they are carrying by categories, and give very full information, and then make a payment into the Copyright Office based on the information they provide. Our role here has not yet been fully defined.

The Copyright Tribunal is going to determine whether the amounts that were paid in were adequate and, presumably, divide them up. The Copyright Office will have no responsibilities in that area. All we do is pay into the Treasury, but we are required to make an accounting -- a very full, detailed accounting -- to the Treasury, of what we pay in and, presumably, this has to match the information given. And, if the information does not match, it is not yet clear just <u>what</u> we do. I assume

we have to write, but this remains to be seen. We are going to have to work this out with the industry. The juke box operation is annual. The cable operation is semi-annual.

Then I mentioned the studies that we are going to have to make. I have just skimmed the surface; and I am perfectly aware that we are going to be starting all of this just at the time the Commission finishes its work.

I would be very interested in any comments or thoughts that any of you have as to ways in which the Copyright Office and the Commission could interact during this coming year. As you can see, we are going to be very much preoccupied.

On the other hand, in areas -- particularly in the information transfer area -- where some of what we are talking about will have some impact, it would seem to me that the Commission can definitely have some impact into our consultations and revision of regulations. Beyond that, I think I had better stop and let you ask any questions that you have.

MR. NIMMER: I have lots of substantive questions: but I will put them off for another time. What is your target date for the completion of the regulations?

MS. RINGER: I would say that there is no one single target date. I think -- as best as I have been able to think it through -- we are going to have to divide the subject matter up into areas, and perhaps have a series of hearings.

It would seem to me that some things are more urgent than others. Some things are going to require more education, and getting used to, than others. I don't see how we could possibly avoid having the regulations

in all of the areas in fairly final form later than next year. I would hope that we can have a lot of them well in hand before that.

JUDGE FULD: Do you envisage calling for a larger Copyright Office?

MS. RINGER: We have rather extensive budgetary and staffing planning already under way and, fortunately--I think this is a tribute to some of the planning and technical people in the Office -- the Congress approved a budget, contingent on the President signing the Bill. As of now, I don't remember the monetary amount, but we have 47 positions as of now that we did not have a week ago. I think we will be starting to use those soon. That is for the planning work. Additional positions -- around 55 -- will be needed when implementation occurs in 1978.

JUDGE FULD: Will you need a larger building?

MS. RINGER: We are supposed to go back to the Hill when the Library of Congress James Madison Building is completed, but it is not, yet, and, meanwhile we will have to find some place.

JUDGE FULD: Do you think a good many of the provisions call for judicial decision and construction?

MS. RINGER: Oh, yes. Absolutely.

JUDGE FULD: Before you get the regulations done, or after?

MS. RINGER: The regulations are really the nuts-and-bolts provisions, and I don't think there is, necessarily, that much interrelationship between the two. There will be court involvement in relation to these "use" provisions where one will be dealing with actual charges of infringement.

MR. NIMMER: Let me try <u>one</u> that will be, I think, a subject of judicial interpretation, but will have to be faced in the regulations: The provisions for registry for the life or death of an author and, also,

on identifying an author of a psuedoanonymous or anonymous work. The Bill reads, "Any interested person may...". Do you interpret that to mean anyone, regardless of how, on its face, absurd the statement may be, as recorded?

MS. RINGER: I think, in terms of our recording function, we would have to accept someone's statement that he had an interest-without evaluating it. This, obviously, won't arise until 25 years after the new law comes into effect. I don't think anybody here will be, necessarily, around--to be litigated against. What I am answering is: The question you are asking will be tested in an infringement suit, and the question would not arise until after 2002.

JUDGE FULD: This Commission won't be in existence then!

MR. WEDGEWORTH: We don't know!!

MR. LEVINE: When the Senate passed the Revision Bill, it was understood that the exemptions in Section 108 applied only to not-for-profit libraries.

Subsequent to the Senate Report -- the Senate passed the Bill -- Judge Fuld, on behalf of the Commission, received a letter from Senator McClellan, which I will read:

> "Senate Report 94-473 in its analysis of Section 108 states in part: Concerning Library photocopying practices not authorized by this Legislation, the "Committee recommends that workable clearance and licensing procedures be developed. I believe that it is important that there be no disruption in the use of copyrighted materials by the patrons of libraries following the coming into effect of

S-22, because of the absence of appropriate clearance and licensing procedures for the types of photocopying practices not included within the exemptions of S-22.

"I therefore request, in accordance with the recommendations of the Senate Committee of the Judiciary, that the Commission, in conjunction with the formulation of guidelines, take appropriate initiatives in coordinating the establishment of necessary clearance and licensing mechanisms."

Then the House Report in September really expanded the number of libraries that come within Section 108.

I am just saying this for the record, that the House report expanded this to photocopying that was done in for-profit organizations, but not done directly for profit purposes (re-sale of copies); and the Conference Report adopted, in effect, the House interpretation of Section 108.

I wonder whether you still believe that there is a necessity for developing clearance and licensing procedures; whether there remains, out there, a vast body of photocopying that would require that kind of clearance and licensing.

MS. RINGER: Let me say several things. First, I don't think the House expanded what was intended by the Senate. I think that what the House did was pretty much what was intended. But that is something that people can argue about.

Second, I am not sure that Senator McClellan--under the present situation--would hold the Commission to this if it did not want to do it.

On the other hand, I would answer your basic question affirmatively. It seems to me that it is something that needs to be done, and I think, from what I hear, it has already started. There are probably other people in the room who can say more about this. But I gather that there was a meeting this week on this very topic, involving publishers and librarians, and that, presumably, this process is already under way.

I think it is a very valid question for the Commission: as to just exactly what it does in relation to that; and in relation to Senator McClellan's letter. It does seem to me it would be a legitimate thing for the Commission to do.

MR. LEVINE: Thank you.

MR. LACY: Many of us, I think -- while the Copyright Bill had been before Congress -- intended to see it in terms of our own interest. I know that some people who honestly believed that the Revision Bill was a Bill to repeal the Juke Box Amendment were astonished to find it had other provisions; and thousands of people have thought of it simply as a means of dealing with library photocopying or educational copying.

I think the Register's talk this morning has renewed in us the realization that this is an enormously complex and elaborate body of legislation touching nearly every aspect of American life.

We have all known that it has been before Congress for over 12 years. I think, sometimes, we forget that another dozen years preceded that. A quarter of a century ago, I was a member of the Librarian's Conference in the Library of Congress. We were having sessions concerned with planning a strategy for getting a Universal Copyright Convention drafted and adopted, and then moving to Copyright Revision. The actual studies preparatory to

drafting a revision bill began, as I remember it, in 1959. The fact that so much work was being done for so many years on this, I think, reminds us how much the whole Copyright community owes to Ms. Ringer and her three predecessors who were involved. It was a long, patient, difficult, complex, intellectually demanding, job that they did! I think Ms. Ringer, herself, has carried this on to a fruitful conclusion. I would like to express my sentiments, with which I am sure everyone here is in agreement, of admiration and congratulations to her and her colleagues.

JUDGE FULD: Amen!

MS. RINGER: Thank you very much.

JUDGE JULD: Are there any other questions?

(No further questions)

JUDGE FULD: Thank you very much, Ms. Ringer. It has been most enlightening.

NCLIS study of a national periodicals system, for the United States; and up-date of a study on relative costs of securing periodical articles through interlibrary loan versus maintaining subscriptions for periodicals

By

MR. VERNON E. PALMOUR

JUDGE FULD: Mr. Vernon E. Palmour is our next speaker. In 1968, he participated in a study to assess the costs of securing periodical articles through interlibrary loan as compared to subscribing to the titles.

Affiliated at that time with a research firm, Westat, Inc., he is now associated with the Public Research Institute of the University of Rochester in Arlington, which is the non-military research division of the Center for Naval Analyses. He has received a $20,000 contract, I understand,

from our National Commission in order to update his 1968 study and re-assess the cost benefits of library photocopying.

He will discuss this on-going study.

MR. PALMOUR: Thank you. It is a pleasure to be here this morning and to talk with you regarding some of my past research efforts and current activities.

Actually, this morning, I am going to talk about two current activities, one of which you just mentioned, which has to do with the updating of the 1968 study. The other activity that I want to discuss with you is another current involvement as a private consultant with the National Commission on Libraries and Information Science. I am working with a task force whose purpose is to design a national periodicals system. The two projects are linked; but I want to talk, first, about the task force and the work regarding a national periodicals system. Then I will conclude by reporting briefly about the update of the earlier study.

In 1970, the Association of Research Libraries (ARL) launched a study of the interlibrary loan activities of academic libraries. I was involved in that study with Westat, Inc. The purpose of the study was to look at the characteristics, magnitude, and cost of interlibrary loans in academic libraries.

The study found that 48% of the interlibrary loan requests received by academic libraries were for periodicals. It was estimated that in the year 1969-70 academic libraries received about 2.1 million loan requests. This was probably a very conservative estimate. Roughly 85% of the periodical requests were filled by photocopying.

Over all, we found that the magnitude of interlibrary loans -- the actual volume of requests received by academic libraries -- had doubled in the last five years. Some more recent data indicated that this growth has continued at about the same rate or, perhaps, even faster. There was a pause in about 1972, where the volume of interlibrary loans tended to look as if it was leveling off. After a couple of years, it now appears to be growing rapidly again. I am now sure the forecasts I made in 1969-70 were low estimates.

We found that large academic libraries -- libraries with collections of 500,000 volumes or more -- received, on the average, about three loan requests for every one borrowing request that they sent out. It was also quite common to find, from the very large academic libraries, that the lending/borrowing ratio was around 10:1 or more--which meant that they lend ten or more items for every one that they borrow. These findings clearly indicate that the idea of "reciprocal" lending and borrowing was not the case at these large academic institutions.

A second study was planned by the Association of Research Libraries to address means for improving the interlibrary loan system. Actually, ARL conducted three studies at that time, only one of which I will mention.

The investigation considered alternative ways to establish a national periodicals system for handling interlibrary loan requests for periodicals. This study originated not only because of the high proportion of interlibrary loan traffic found to be for periodicals, but during the same period, the subscription costs and the number of journals published, were also escalating. Due to all of these factors, the

Association of Research Libraries felt that something needed to be done with regard to relieving member libraries of some of the interlibrary loan burden.

The study of a national periodicals system investigated three approaches to handling the lending of periodicals. The first approach was that of a single new facility with a comprehensive collection patterned after the British model -- the British Library Lending Division at Boston Spa. (We will be hearing about the BLLD tomorrow from Mr. Maurice Line.) The single center would attempt to subscribe to all of the world's worthwhile periodicals. Based upon the British experience at that time, this was roughly 40,000 current titles. By "current", I mean those that are currently being published.

The second approach was that of a single comprehensive center serving as a back-up library for a number of small satellite collections that would be scattered geographically about the country. These dedicated satellite collections would contain the most heavily-used titles, perhaps 2,000 journals. They would certainly meet the bulk of the requests at the regional level.

A third approach considered was a regional resource network based on designated existing research libraries.

Based on the analysis of cost and other factors we recommended a single national center--i.e., the first alternative. This study was finished in late 1973.

During the ARL study on periodicals, Westat was awarded a contract with the National Commission on Libraries and Information Science (NCLIS) to look at the role of resource and bibliographic centers in a

national network for all materials. A hierarchical network was recommended with state, zonal and regional resources at the multistate level, and national components. A single comprehensive periodicals center was recommended at the national level.

As part of the review process by NCLIS on this study, a two-day conference was held in April 1975 in Washington, D. C. Representatives from the library community were invited to assist the NCLIS in deciding on next steps to take in light of the study recommendations. The group agreed on the need for a national periodicals system, and that the NCLIS should take action to bring about such a system. The NCLIS appointed a Task Force to prepare a specific plan for the establishment of a national periodicals system. The Task Force began its work in January 1976 and should complete its activities in January 1977.

The Task Force is made up of sixteen individuals that represent large academic libraries, public library systems, state-wide library systems, the National libraries, other library organizations involved in lending of periodicals, and the commercial information sector.

As a task force, we have concentrated on specifying the goals and objectives of a national periodicals system; the services and products that should be offered; criteria for attempting to choose the best approach; and alternative structures of the system.

First, on the goals of a national periodicals system, the Task Force has put together a list of specific goals that are being considered. You have to keep in mind that much of what I am going to say is still tentative. At our task force meetings, we re-do some of the things that we have agreed upon previously.

As far as specific goals, the first one is the improved bibliographic and physical access to periodical materials for all users. By that, we simply mean being able to identify what you are looking for, and find the location of it and actually get it in hand.

Secondly, the improved delivery of periodical materials is a specific goal. The belief of the Task Force is that the activities in the bibliographic areas have outstripped that of document delivery. The on-line searching capability that is coming into play now makes it easier to find citations or even, to some degree, the locations of where they are held. But the actual securing of the document is still quite a hassle in the informal, interlibrary loan system that we have in this Country.

The third specific goal under consideration is that of reducing the burden on large net lenders. I have alluded to this in the first study of the Association of Research Libraries.

The fourth specific goal is more effective use of library funds in the provision of periodical materials.

Fifth: Effective awareness and promotion to insure wide knowledge of the availability of the system and its services.

And then, the last specific goal is that of improved access to the contents of the periodicals. Of course, this implies the improvement of the various steps in the preparation, publishing, abstracting, indexing, bibliographic identification, and control, as well as the distribution of materials. Here we have to be aware of the various components, both in the private and the public sectors involved in this process.

Next, I will speak briefly on the services and products. For the most part, we are talking in terms of a system that, to a large degree, would

depend upon photocopies for the immediate future. The following design features have been considered for this system:

(1) The collections -- I emphasize the plural there, "collections" -- should be comprehensive in subject coverage.

(2) All worthwhile journals should be collected and made available.

(3) Heavily used, moderately used, and little used titles should be included in the collections.

(4) Value of content, rather than language, should be the criterion for selection of a title.

(5) Materials acquired for dedicated collections should initially build forward from a specified date and add back files later.

(6) In the immediate future, most of the requests will be transmitted by mail and teletype. Photocopies and loans would be dispatched by mail. In the future, a computer-based communication system will be important. Telefacsimile is being considered as a possible means of transmission of urgent requests.

(7) As the system develops, there would be other services and products added.

I should make just one comment on copyright.

The Task Force is very much aware that any periodicals system has to operate under the copyright laws that exist. The feeling of the Task Force is that, with an organized system -- the kind of system that we are talking about -- it would be much easier to handle the problem of accounting for copyright purposes.

A number of alternative structures of a national periodicals system have been conceptualized and reviewed. By structure, I mean, an approach to

pulling together the various components into a national system. I will first give a couple of examples of the alternative structures. Then I will go back and talk a little more on planning factors, and criteria for evaluating and comparing structures.

The Task Force has agreed from the outset that the bulk of interlibrary loans should be handled locally. The idea was not to drain everything off to the National level, but to continue the encouragement of local collections at the local library. After all, most of us will agree that the majority of patron needs should be met in the local library.

The first approach was one that had three levels. At the first level -- local, state, and regional (multi-state) -- we envisioned a number of small centers that would house the 2,000 most heavily used titles. These centers, perhaps 10-20 in number, would be responsible for filling the bulk of requests at the local, state, and regional level. Now, we realize that not every state would be willing, or even have the assets, to set up such a center, so, clearly, there would be some sharing between the states.

At the second level in the system, four dedicated national centers would be created to handle demand for the so-called "moderately used" titles, roughly, 8,000 titles out of 40 or 50 thousand total currently published titles.

We are talking in terms of 40 to 50 thousand worthwhile titles for current subscriptions. The 2,000 most used titles should satisfy about 50% of the overall demand for interlibrary loans -- based on U.S. and British data. You can see that the demand is heavily concentrated over a few titles. Numerous studies have shown this.

The four centers at the second level might include components such as the Center for Research Libraries, Universal Serials and Book Exchange, and other existing systems that could be converted into dedicated centers. All of these -- at least, the ones I mentioned -- the Center for Research Libraries, which you will hear more about, and the Universal Serials and Book Exchange, are in fact in the business of providing access to periodicals.

For the remaining little-used titles (about 35,000), the system would depend upon the existing national libraries and a few designated strong collections in universities and research organizations. The key here, at getting to the periodicals held by these existing collections, would be a bibliographic apparatus which, for the most part in our thinking, is the CONSER file.

MR. WEDGEWORTH: I am sorry to interrupt.

Would you just repeat that?

Which category are you speaking of now?

MR. PALMOUR: The third level.

MR. WEDGEWORTH: 45,000 in the third level?

MR. PALMOUR: 35,000.

MR. WEDGEWORTH: 35,000.

MR. PALMOUR: These are just planning figures--as far as numbers of currently published titles. It is the little used materials, the requests that would not have been filtered off at the first and second levels.

A second approach in the way of another example, is that of relying upon the local, state, and regional level to fill a high proportion of the inter-library loan activity. At the so-called national level, a single center would handle the requests for little used titles. This would be a two-level system.

Many other alternatives have been considered as alternative designs for a national periodicals system. One such approach consists of nothing more than a computerized file which would identify where all titles are located. Such a system, to be effective, would require that the owning libraries agree to make these titles available. It could not depend on the informal approach that we now have.

Before I give the general structure of the system as now recommended by the Task Force, I would like to discuss the criteria for evaluating and comparing various alternatives. Certain planning factors will also be mentioned.

The following criteria have been developed:

(1) Acceptability to Community. "Community" includes librarians, users, publishers, and the other information components in both the public and private sectors.

(2) Legal Basis. Due to the funding problems of a national system, the system is going to interact with various types of agencies -- State systems, individual libraries, other National libraries. There could be legal problems here, with regard to the structure of the system.

(3) Governance. What kind of organization will a national periodicals system require? Should there be a Board of Directors at the top? Should the management be incorporated into one of the existing Federal agencies? We must distinguish between the management and the actual operation of the system. The management might be vested in one group which would not actually operate any of the components in the system.

(4) Performance. Clearly the success of any kind of national periodicals system is going to depend upon being able to fill requests quickly. Probably

the greatest fault in the existing system is the lag time in filling requests.

(5) Start-up Potential. There is a feeling on the Task Force that something needs to happen reasonably quick. Consequently, in comparing the various mixtures components, the start-up potential is important.

(6) Funding Potential. The recommended system will require start-up and operational funds. So, again, the structure has some bearing on the ease or difficulty with regard to future funding.

(7) Costs.

(8) Overall Impact.

(9) Growth Flexibility. One thing is obvious in the business of trying to estimate the number of current interlibrary loans and forecasting the future demand: it depends on the system you have. If you have a good system, the demand is going to grow. Therefore, the system has to be flexible in order to absorb whatever growth takes place in the future.

Now, a few planning factors that we have been using:

We have talked about 1977 for establishing the system organization with actual lending services beginning sometime in 1978.

I have already alluded to the difference between the so-called little used titles; the moderately used titles; and the heavily used titles. Past studies, for the most part, all report about the same findings. That is that something less than 2,000 titles should satisfy about half of the expected annual demand. Based on the English experience, about 75% of the total annual demand is for currently-published periodical

titles. About 10,000 titles -- in rank order of use -- would satisfy about 90% of the expected annual demand for current titles. Overall, about 45,000 current titles are assumed as worthwhile for planning responses. The percentages of demand given assume that all back files are available. In other words, if a journal has been available for 20 years, it assumes that 20 years of back issues are available to meet those levels of demand.

We are estimating, for the first year of operation, a potential of about one million loan requests. The structure of the system will influence how many of these requests could be handled. Different approaches to designing a system would make available more or less titles for meeting demand.

I would like to conclude this discussion about the Task Force activities by summarizing where we are today with regard to the system structure.

The Task Force has reached a consensus on a three-level system. At the local, state, and regional level, we are not recommending any new centers. We are not suggesting that States develop new centers, or anything like that. We are attempting to describe what is going on at that level and offering some encouragement for continued collection development.

At the second level, the Task Force believes there should be a major comprehensive periodicals collection. The recommended approach is to start with a single center and based upon experience decide if a single center is sufficient. The initial single center would be patterned after the British Library Lending Division.

At the third level, the system would depend upon being able to tap capacities that now exist in the strong collections of National libraries and other academic and research collections. It will take the single center at the second level a number of years to build the back files in order to fill the majority of requests. Consequently, there will be an important requirement for the existing strong collections to provide back-up. A computerized file would be used to identify the periodical titles, the owning libraries and the specific issues held. This development is now under way in the Library of Congress, called CONSER. Within this general framework, the Task Force is now specifying the three-level system.

In closing, I will comment on the update of the 1968 study that was mentioned in the introduction. The principal investigator was Gordon Williams, who is here, and will be speaking later.

A grant was made by the National Science Foundation to the Center for Research Libraries (CRL) of Chicago. My involvement came about through a sub-contract given to Westat, Inc. Two of us concentrated on developing the mathematical model.

The original study was broader than it may appear from the few comments I am going to make concerning the update of the model. The model was just one part of the study. In fact, the study addressed some of the issues of a national lending library for periodicals. The model that is to be updated with CONTU funds is a decision model which attempted to help librarians in making the decision as to whether they should subscribe to a journal, or whether they should borrow it through the interlibrary loan system. The model takes into account the various cost components of owning a periodical title and maintaining it. Those

costs include: subscription cost; initial cost of acquiring and cataloging a new title; annual maintenance cost (check-in, claiming, binding, marking and bindery costs); storage costs; disposal costs; (cost to circulate items, reshelving, and shelf maintenance); borrowing cost from external sources; and finally the model treated the residual value or salvage value of the volumes held by the library at the end of the planning period.

The model considers all of the costs from an economic point of view. It is what is called a "present value model". It accumulates the costs over a planning period, assumed to represent the life of a periodical. We used both 25 and 50-year planning periods in the previous anaylsis.

An inflation factor is included to annually inflate the specified cost elements. The present value concept also considers a discounting factor which allows you to inspect the future cost in terms of present dollar values. When comparing two alternatives with quite different future expenditure patterns, it is important to compare the total life-time costs on some comparable basis. The computerized model does this very easily.

Just to mention again: The key question that the model seeks to answer is, "At what frequency of use for a given periodical title, is it less costly for a library to borrow the requested title, or receive a photocopy, rather than maintain its own copy?"

Based on a set of earlier inputs -- one of which was a $25.00 a year subscription -- it appeared that if the library had six requests or more annually for the title, then they were better off from a cost point of view to subscribe and maintain the title on its shelves.

One of the problems in using such a model is that it requires some estimate of expected demand. For those of you who have experience in libraries, you know it is difficult to try to estimate demand on these items. I cannot say that the model was used that often by librarians. I know of a few cases where it was applied by individual libraries.

The results used in the first study were based on a survey of four large academic libraries. So the first report dealt strictly with the cost to academic libraries.

Our approach in updating the model will be to pull together existing data from different kinds of libraries -- not just academic libraries, but special libraries as well as public libraries -- relying, for the most part, on existing cost data. There have been numerous cost studies done over the last few years, and I think we will be able to rely on this secondary cost data, rather than doing new surveys. The intent is not to do another survey of costs in libraries.

The output, again, will be essentially that of exercising the model under different sets of assumptions; to look at how this cut-off point between owning and borrowing changes for different kinds of libraries. It is all predicated on cost. A few changes may be incorporated into the model. In the original model, we really were not able to handle anything very sophisticated or useful from the point of view of taking account of the value of the users' time. There is always a feeling that the library user values the time taken to satisfy the request. Some evidence suggests that not many users are willing to pay a very high price for getting materials quickly as compared to the usual 2-3 weeks for interlibrary loan.

I will try to answer any questions that you may have on what I discussed.

Again, I thank you.

MR. CARY: Mr. Palmour, do you have any reason to believe that the cost factors will be different, to any great extent, for public libraries and other libraries as opposed to the academic libraries?

MR. PALMOUR: Yes. In fact, size alone makes a significant difference. I am aware of one special library that used the model with its cost figures. They discovered that, unless they had about ten or more requests per year it was cheaper to borrow through interlibrary loan.

MR. LACY: Mr. Palmour, I gather from your presentation and from some written documents that the study assumes the present structure of periodical publishing, and for any difference in the future the national periodicals system will adapt later.

Now, it seems to me that if the national periodical system is as efficient as it might become, and with the American technology that it might develop, it might, in fact, operate substantially to alter, in both the negative and positive ways, what the publishing system itself, is adopting.

Now, negatively, in the sense that if it does become extremely efficient, it will alter substantially this cost ratio that you are talking about in connection with the more efficient use of acquisition funds, and it might be a means of libraries discontinuing subscriptions to many less-demanded journals, and using those to subscribe to more demanded journals; to buy books with; or provide other library services.

So that the less-demanded journals would either need to cease publication, or to raise their subscription costs very substantially, or to derive a considerable part of their income from the users who used it via the system, rather than using it by subscription.

On a positive side, if it were efficient enough, it might make it possible to distribute some types of publication -- make viable sort of a publication on highly specialized journals--that cannot be made available by just publishing tables of contents, or abstracts, with the full documents deposited in the Central Collection System and, indeed, it might give access to journal-like documents -- research publication of, say, two to five thousand words -- without, however, ever introducing them into any form of journal publication--simply entering the article in the bibliographic system.

It seems to me that these are tremendously important aspects of a national periodical system.

I am a little disturbed that consideration of them seems to be absent from the work.

Secondly, I note what you said, and this is a very minor point, really. There are all sorts of ways other than having people in the Task Force involved in it.

You spoke of the Task Force representing private and commercial activities. In point of fact: of the sixteen members, one represents a commercial photocopying and bibliographic service, and one represents a private but noncommercial publisher. There is no commercial publisher involved in the Task Force. It seems to me we merely glossed over that expertise.

But, much more serious, I think, is the fact that this is so important a factor that we ought not to think of the great periodical publishing thing, here, and of building an ancillary service around it. You ought to realize that the ancillary service is so important that it may transform the character -- perhaps, quite desirably -- of the base system and sensitivity. That is very important to the whole problem of dissemination of information.

MR. PALMOUR: Yes! I would like to respond to the first part of that. One of the more difficult areas that we have wrestled with is that of the changing technology with regard to the very format of periodicals. We realize, as a Task Force, that there is an interaction here between the present publishing format, and what we are attempting to set up here.

As far as the technology, we have considered the fact that the periodical, as we now know it, is subject to change; that many things are taking place; and that this Center could, in fact, play a key role in some of these other kinds of publications, either as we know them today -- e.g., preprints -- or essentially making available materials that have not been put into a formal periodical format.

The use of microform is another area we have talked about. Today, only a very few of the 40-50 thousand current titles are actually published in microform version immediately. Many of them, as you well know, are available later. But we have looked at different approaches as to how we might use microform -- e.g., at the heavily used end, where we are talking about many fewer titles. I assume, for instance, that University Microfilms, Xerox, are putting many of these into microform. They must be choosing those titles that, from a commercial point

of view, are the more heavily used, so it may well be that, for the more heavily-used titles, that putting them either in fiche -- that is one of the areas that we are looking at particularly -- or film would be a feasible way to go.

But, again, I did want to emphasize the need for flexibility; and that need for flexibility, to a large degree, is based on two aspects:

(1) Our inability to estimate demand; and

(2) The technology, and what is being done there.

You are correct in the fact that there is, really, only one individual on the task force who is involved in commercial photocopying. We hope that we are able to take into account the views of all components, and we fully realize that this is a very complex issue here.

MR. LACY: I just wanted to emphasize that what I said is, in no way whatever, negative about the creation of the system.

MR. PALMOUR: No.

Mr. LACY: I am all for it, in fact; but I think it is even more important than some of the proponents have realized; and is likely to become an important aspect--not only in use and access to data--but in publication and dissemination of data, and that you should give a thought to the sensitivity and importance of this sort of process.

JUDGE FULD: Mr. Wedgeworth?

MR. WEDGEWORTH: Mr. Palmour, I have a couple of questions, here, about both of the two projects that you reported on this morning.

As you know, the American library community has been quite interested in seeing the development of some kind of national system for some years, but one of the things that concerns me is that there seems to be some curiosity

in the conclusions that you have drawn from the data that you developed. To give a simple illustration, or example, in a major study that you did for ARL, you concluded that one of the significant problems was that there were these net lenders who were lending an enormous amount of material over that which they borrowed from other libraries. At the time this study was reported, I believe I suggested to you that this was sort of a self-generated problem, since they controlled the bibliographical apparatus which identified the locations of those items.

But what I would really like you to address is, that, having developed the data which shows you have a problem because you have these net lenders that need to be relieved, the conclusion that you drew from that was that, if you reduced -- let's assume, for example, that we are talking about 75 net lenders -- that number of 75 to 20, with the specialized collections, that you are, in fact, going to reach a resolution of this problem. I would like for you really to comment upon that, because the logic of its escapes me.

MR. PALMOUR: Part of the logic with regard to the concern of the ARL members had to do with the fact that at that time there were a number of them preparing to start charging fees for interlibrary loans. I think the concern that ARL had at that time was that it could be very disrupting if everyone went off on their own and started charging different fees. As you well know, some of them have started charging since that time, and we have seen the pattern shift. As soon as one large library starts charging six to ten dollars for a filled request, many of the requests that they were receiving shift to, in many cases, another nearby large collection.

Right now, I don't know the exact number, but there are several -- less than ten, I think -- of the ARL libraries that are charging, and it is growing. The concern for relieving the burden was not just the idea of reducing 75 -- it was less than 75 -- but, say, the leading fifty or so lending libraries, down to some smaller number -- ten or so. The real concern was that these fifty not take some action to, essentially, relieve themselves of this burden that could injure the interlibrary loan system as we know it.

MR. WEDGEWORTH: In effect, then, what you are saying is that they can be more specialized, and can render the service efficiently through the Center.

MR. PALMOUR: The idea was essentially one of how best could you subsidize -- and I use the word "subsidize" loosely, because I don't mean strictly through Federal funds -- the interlibrary loan system on a more equitable basis. The ARL libraries were -- and still are -- essentially serving as de facto national libraries. When you take a large academic collection that is filling some thirty to fifty thousand loan requests, that is a real burden.

MR. WEDGEWORTH: That is true! But, if you accept my contention that this problem is partly self-induced, what have you done to really investigate the alternative of the non-directed networks that have been developing in various parts of the Country, some of which are state-based, that have really become effective systems for handling this traffic, distributing it over a larger number of libraries at what we consider to be a smaller cost than the proposal that you presented this morning?

MR. PALMOUR: We are very much aware of these systems. I personally have looked at a number of the local, state and regional systems and, in fact, we know that in, say, roughly five states, they do quite a good job of filling the interlibrary loan requests for periodicals -- Minnesota, New York, and Illinois being good examples.

Yet, when you look at the unfilled requests, say, coming out of the State of New York, given their strong collections, they tend to be highly specialized research kinds of requests, as you would expect since they filtered through the research libraries.

Now, the concern that these groups have, as well as the individual lending libraries that are the resources in the state systems, is the economic crunch on subscriptions. I think, when we did the original ARL study back in '70, there was probably less concern than today for the fact that as large academic libraries drop subscriptions, they may all be dropping the same ones. Consequently, those titles may no longer be available in the United States. To a large degree, I think that concern has shifted the interest of a number of the ARL directors towards the idea of a single national center.

When we finished the ARL study on periodicals, I don't think there was a consensus on the part of the large academic librarians that a single center was the best way to go. The thinking was much more towards looking to gather the existing libraries into some kind of a regional setup. Where today -- and this is strictly on an informal basis, from my contact with the same community -- I have the feeling there is much more of an appreciation for the need of a single center that, over the long term, can guarantee that these titles are going to be there.

MR. WEDGEWORTH: Which category of titles are you referring to?

MR. PALMOUR: All of the so-called "worthwhile" titles.

MR. WEDGEWORTH: What, to you, would suggest that this would be a possibility, given the major libraries, such as the Library of Congress; the National Library of Medicine; the National Agricultural Library; and the other major research libraries in this Country? They have been unable to reach anywhere near this kind of comprehensiveness.

Mr. PALMOUR: If I understand your question right --

MR. WEDGEWORTH: I am saying: What would suggest to you that you could build a single center that would reach that level of comprehensiveness?

MR. PALMOUR: There would be no attempt for a single center to reach the full comprehensiveness required. In fact, as I mentioned, the third level would still be a back-up, calling on the Library of Congress, the other national libraries, as well as the many strong collections that exist in the library communities today. The single center would be, primarily, one geared to fact turn-around, starting out with only the current titles.

MR. WEDGEWORTH: But we would still be required to physically deliver that item somewhere?

MR. PALMOUR: Yes! The photocopies -- assuming that is the primary format going out -- would be sent to the requesting libraries.

MR. WEDGEWORTH: Accepting that Center, then, let's go to the next stage of the problem:

Given the way in which we distribute materials today, what would suggest to you that a single center -- or even a small number of centers --

would be more effective than the notion of good bibliographical apparatuses around the Country, and the promotion of more participation into what would form this national network?

I am speaking, specifically, of the mail service.

MR. PALMOUR: Yes. That, of course, is one of the possible flaws in the idea of a system -- relying upon the mail!

Surprisingly enough, based on -- again, I believe this was in 1974 -- figures I was able to get from the Postal Service --

MR. PALMOUR: -- their stated average delivery times, indicated that a single center located centrally in the Country would only lose, on the average, about one day, as compared to having four or five regional centers. The problem with the U.S. mail is one of uncertainty, rather than just time.

MR. WEDGEWORTH: Right!

Having toured the large Chicago Post Offices and seen all of the lost books and damaged packages and items, I am not impressed!

Let me just state for the record that I am in no way trying to denigrate the work you have done, and that our colleagues in Great Britain have done, but to suggest that the complexities in this Country are unique in our experience.

I just have one other question about the second study that you worked on.

Does the model that you have been working on make any assumption about the rate of use in the future?

For example, does it take into consideration the essential ephemerality of journal literature, such that there might be a built-in time delay?

For example, you may have a new journal that would begin to be published and, in the first year, you may have a fairly heavy demand, but we know that there is no extremely high mortality rate for journals.

Does it take that into consideration?

MR. PALMOUR: The model, actually, handles titles on an individual basis. In other words, the assumptions put in for a single title may well attempt to characterize the demand.

The model, itself, does take into account the expected fall-off in demand, based on age. On the average, based on empirical data, we specified how demand drops off as a function of age. And that is built in. In other words, it looks at an individual issue -- say the one coming out this quarter -- and then it actually tracks that issue and, essentially, averages out the expected future demand.

MR. WEDGEWORTH: You can take both into consideration.

MR. PALMOUR: Only the distribution of the demand, not the actual demand. We are only concerned about the shape of the distribution because the model tells you what the actual demand needs to be for you to make a decision on ownership. We do not have actual demand, only a characterization of the distribution of demand.

MR. FRASE: Gene, on some of the questions, like: What is the cost of this national periodical system; or how it related to competition between the public and private sector; whether it is a monopoly operation; whether the prices are going to be subsidized; or actual costs -- is your final report in January going to try to deal with these tough questions?

MR. PALMOUR: The best we can. But realizing that there are some issues here that, in the end, the Task Force may not be able to agree upon. It is hard to predict. Certainly, from the point of view of trying to specify this three-level system, and cost the components involved, we will do that. I have already done that to a limited degree. It is a very expensive operation. We are talking about a comprehensive center starting out with an operation costing $3 million and increasing to $13 or $15 million at the end of five years. That is not including any fees that might be paid to the backup libraries at the third level.

Yes. We are aware of the tough questions.

JUDGE FULD: That is a good place to adjourn. I would say. Thank you very much.

We will adjourn until 1:45.

AFTERNOON SESSION

JUDGE FULD: On the record.

MR. Donald King of King Research, which is located in Rockville, Maryland; has had seventeen years of experience in survey research, marketing research, and information-related fields. Incidentally, both Mr. King and Mr. Palmour, who addressed us this morning, received a BS degree, and an MS degree in Statistics, from the University of Wyoming.

King Research was recently awarded a contract--funded by the National Science Foundation and the National Commission on Libraries and Information Sciences--to test the feasibility of establishing a royalty payment mechanism for library photocopying.

CONTU has provided additional funds to supplement this study, enabling the inclusion of analysis of data from MINITEX.

Mr. King will speak to us about this project. Welcome to our midst !

NCLIS PHOTOCOPYING STUDY

By

MR. DONALD KING
KING RESEARCH, INC.

MR. KING: Thank you, Judge Fuld, other members of the Commission.

I certainly consider it a pleasure to be here and I thank you for inviting me, particularly after our dinner meeting last Spring that turned out to be such a spirited meeting -- and a very enjoyable one for me, by the way.

I would like to talk about the study that we are doing under the sponsorship of the National Commission on Libraries and Information Science, and which is also partially funded by the National Science Foundation.

My discussion today will be largely a progress report--rather than a report on results since we have not progressed to the point where I feel that we could present results. However, I will give some preliminary results that may be of interest to you.

The first thing I would like to do is to give you some background concerning what it is that we are doing in this particular study. Actually, it involves two studies, rather than one.

The first study is to determine the amount of photocopying that is taking place in the libraries, and the second study is to design a royalty payment mechanism based on the information that we obtain in the first part of this study.

In the first study -- which is to determine the amount of photocopying -- we will observe the amount of photocopying that is performed in libraries throughout the Country; both for its own patrons, as well as for other libraries in the form of interlibrary loans.

There is a major problem with determining the amount of photocopying of journals for individual articles, issues, or journal titles, and this problem amounts to being able to determine the amount of photocopying that takes place over time, as well as the frequency distribution of photocopying for individual articles, or transactions from issues or journals. Mr. Wedgeworth this morning asked some questions, of Mr. Palmour, which address this issue and which point out the importance of knowing exactly what those distributions are.

Also, photocopying for an individual article is likely to take place over a long period of time. As a matter of fact, in some of the studies that we have done for the National Science Foundation with scientific and technical articles, we have found that the half-life of a cited article can be as high as ten years. By "half-life" I mean that half of the uses take place prior to that time, and half of the uses take place after that time.

As far as other uses of articles are concerned -- that is, non-citation use -- there is evidence in the literature that the half life is about three years--which is well within the time limitations indicated by the law that has just been passed.

Another problem is that we must determine the amount of use for an article, or an issue, or a journal title, not only nationally in the way that Mr. Palmour mentioned this morning, but also by individual

libraries, because it is the individual libraries that are to be involved in any royalty payment mechanism.

We find that the amount of use in individual libraries is not nearly as large as one would like in order to obtain information for making a systems design of the royalty payment mechanism.

Because of this, we need to get a very, very large number of observations from each of the libraries in the sample. Our study is proposed to obtain in the neighborhood of 76,000 individual photocopies for a total of 370 libraries. This seems like a large number, but we do not think that it is large enough to provide us the entire picture. Because of this, we have supplemented our data with an additional study involving 130,000 interlibrary loan transactions from MINITEX.

We are, I think, very fortunate to have such a data base available to work with.

The 76,000 observations that should be obtained from the sample of libraries include only the amount of photocopying that takes place. We are also taking a sub-sample of 18,000 observations to determine the characteristics of the photocopying that is taking place.

For example, we will find out for each transaction the type of items that are involved; the title of those items; the publisher of those items; the date of publication; the year of copyright; the type of transaction that takes place; the source of request -- (be it by interlibrary loan or within the library); whether it is an individual or an institutional request; and what the purpose of that request is. Thus, we will have a substantial number of observations that give the characteristics

of the photocopying, as well as just an overall gross number of photocopying that is taking place.

We will, ultimately, complement this information with data from another survey to obtain information about the library operations and, particularly, those operations that have to do with photocopying. We will also obtain information that can be incorporated into cost models of photocopying.

I should point out that in measuring the photocopying costs for the clearinghouse design, we need not only to identify cost parameters for the operation of a clearinghouse, but we also need to determine the hidden costs that are incurred. For example, those costs that are incurred by libraries, and those costs that are incurred by publishers should be measured as well since they may be substantial enough to be considered in the design of a system. Thus, we can consider all costs even though some may not be directly in the operation of a clearinghouse.

To give you an example of what I mean: One possible royalty payment mechanism might be to have a bar code on an article, or the front page of an issue, or on a journal, that could be xeroxed to send into the clearinghouse. The bar code would be read at the clearinghouse to record the transaction identified by the publisher, the publication issue, and other information that could be used for making royalty payments.

However, even one photocopy in a library is not necessarily a small cost, since it can run anywhere in the neighborhood of five cents to twenty-five cents. We want to measure that cost, so we know what kind of burden would be placed upon the libraries in order to accommodate such a system.

The same thing holds true for the publishers. To print a bar code on a journal will require additional costs for the publisher; and we want to determine that, as well.

Now, I would like to describe in more detail how we are conducting the study and where we stand at the present time.

The survey of the 370 cooperating libraries was taken from a random sample of public libraries, academic libraries, special libraries, and Federal libraries -- which are also included as "special libraries".

Mr. Frase informed us in our July Advisory Committee meeting of the possibility of special treatment for profit libraries (i.e., libraries located in profit organizations). Therefore, we drew a larger sample of those kinds of special libraries, so that we provide statistically valid estimates for that segment of the library population.

The sample was stratified not only by the type of library but, also, by geographic location and, more importantly, by the size of the library. Larger libraries were chosen with a greater probability, so that the sample is a disproportionate sample. Weighting factors will be used to bring the sample back into focus in order to make statistically accurate estimates for the total population.

We mailed out a total of 542 screening questionnaires to libraries found in these strata to determine their eligibility to participate. Some of the libraries are not eligible because of the amount of photocopying they do, or for some other reason. We also must determine the number of photocopying machines they have, and the approximate amount of photocopying that they are now doing. The reason for this is that we will follow up with log forms so that the amount of photocopying that is taking place on each

of the machines can be recorded over a specified period of time. We also send "characteristics" forms to obtain the information that I mentioned before. The screening form was used to tell us how many of each form to send to sampled libraries.

It is important to mention that our survey does not include coin machines. The observations include only those machines that are under the direct operation of the library staff.

Now, I would like to indicate, as part of this progress report, what has happened thus far.

We mailed out the screening forms between September 14 to September 20, and we received back, from those 542 forms, a total of 235 thus far.

Four percent of the total population has refused to participate. Approximately one percent was found to be ineligible, and two percent did no photocopying.

We are somewhat concerned by the lack of response thus far, and have taken steps to follow up with a second letter. Two follow-up letters include one from Mr. Trezza of NCLIS and a joint letter from the Executive Directors of ALA, SLA, and ARL. The latter letter endorses the study, encourages the librarians to participate, and indicates the importance of this particular study to the future of the copyright issue.

We have also gotten some indications that there is a concern on the part of the libraries that, if they submit these data to us, they could be used against them in a possible suit: we have attempted to indicate to these respondents that their data are strictly confidential. As a matter of fact, we have taken steps to lock up the responses. We have also indicated to the concerned respondents that the copyright law

does not become effective until January 1978. A number of librarians did not realize this.

We are also contacting each non-responding library by telephone. The telephone lines at NCLIS are used to contact these libraries. We should be able to increase the number of cooperative libraries, within the next two weeks, to a total of 370 libraries.

Now, I would like to indicate briefly how we stand on the MINITEX data.

We have incorporated approximately a third of the data into coding and keypunching, and have actually made some computer runs to get some indication of what is to be expected.

I was going to show some slides on these data but they did not project very well. Therefore, I will indicate very quickly what kinds of results we got.

We took a sub-sample of ten of the libraries that participate in the MINITEX System, and got some information concerning the amount of usage; whether the journals that they borrowed copies from were held by the library, and how the distribution occurred over time.

We found, for the period of January through May of 1976, approximately 10,000 requests, of which 96% were filled by MINITEX.

About 13% of the periodicals that had requests were actually held by the requesting libraries and 98% of those were fulfilled by photocopy from MINITEX.

We sub-divided transactions into those involving publications that were greater than five years old and less than five years old. We found that 5,800 of the requests came from publications that were less

than five years old and that 4,500 came from requests that were greater than five years old.

Studying the year of publication (1975, 1974, down to 1971) we found the number of requests for 1975 was 1,600 and the number dropped very rapidly, down to 1971. The number of requests in 1971 was a little under 500.

We tried to determine how many of those journals had more than five requests because we anticipated that this would be a requirement of the new law. We found that of the 5,600 requests approximately 1,330 were from journals involving more than five requests from them. Thus, only 1,330 requests from the original 10,000 would be subject to royalty payment.

We did the same thing for journals photocopied ten or more times and we found that that did not increase the number greatly. As a matter of fact, there were 10,000 requests and of those, only 1,373 had ten or more requests.

MR. FRASE: Excuse me.

MR. KING: Yes.

MR. FRASE: Do you want interjections here?

That figure you just gave for the five-or-more was based on the total MINITEX figure? It was not the borrowing institution but the lending institution?

MR. KING: I am not sure that I answered your question correctly, sir. The data were obtained from one lending institution -- MINITEX. We then observed transactions for the borrowing institutions. The number of transactions in which more than five photocopies per journal were observed refers to the borrowing library.

In other words, we have ten institutions broken out individually, and we counted only--for those institutions--that more than five times requests came from a single journal.

I answered your question incorrectly, the first time.

MR. CARY: May I interject something?

MR. KING: Yes, sir.

MR. CARY: You mentioned five-or-more times; and I gather that you were referring to this as being something that is "involved" in the new law--as you put it.

I think, maybe, the record should show that it is not in the law, per se ! It is merely a guideline which the Committee has put in there.

May I ask you this?

The guidelines, themselves, speak of six or more.

MR. KING: Yes, sir.

MR. CARY: Does that make a difference in your figures?

MR. KING: It certainly would!

We used "five or more" because this calculation was done, I think, in the first week of September, prior to the passage of the legislation; and we merely wanted to begin to get a feel as to what is happening.

Please keep in mind that this is only from ten institutions who are using the MINITEX System.

All we are trying to do at this time is to get a notion of what was happening. The results should not be considered final by any means since the observations are for a short period of time. We will do it for the entire year; and all of our projections will be for an entire year, because that is part of the legislation, as well.

MR. CARY: Would it be advisable, or necessary in your future work, to use the figure six or more?

MR. KING: Oh, yes. Absolutely! Yes, sir! Absolutely!

We are having an Advisory Committee Meeting tomorrow at which time we should clarify all issues that will enter into our data collection activities; as well as our analysis and recommendations. Therefore our results should coincide as closely as possible with the new legislation.

At the time these data were calculated, we just did not know what the legislation was really going to be--for sure.

MR. CARY: One other item.

We have just received some communication from the Xerox Company, which points out that Xerox is a trademark, and they are very much afraid that if people keep saying "We Xeroxed this", that they are going to lose their trademark. Other trademarks have been lost.

I notice at one point, you did say "Xerox."

Just for the record, I thought we ought to indicate that.

MR. KING: To the Xerox Corporation, I apologize!

It is something that, frankly, we have to be careful of; and I think it is a valid point, and an important point.

MR. MILLER: I don't see why we have to be careful of it. The Xerox Corporation has to be careful!

Frankly, for the record, I resent the Xerox Corporation telling me how I should exercise my right of free speech!

I am usually compensated for my services. If the Xerox Corporation would like to compensate me in protecting their proprietary name, I am receptive to any offer!

JUDGE FULD: Photocopying covers that situation.

MR. LEVINE: I think the record should also reflect that--whenever we do use the word "Xerox" to mean "Photocopying"--we always speak with a capital "X".

MR. MILLER: And put in an "R" in a circle.

MR. LEVINE: Yes. The unspoken "R"!

MR. KING: I certainly would not mind, for all good studies that are done, if they would refer to them as King Research Studies.

Let me continue on to some of the functions that we are studying for Royalty Payment Mechanism.

There are six functions that we are studying.

One is that the Royalty Payment Mechanism will give photocopying permission in return for royalty payment.

Another is that the RPM will collect data describing the volume and characteristics of photocopying;

The RPM will determine what individual libraries or library systems shall be charged for photocopying;

It will collect payments from libraries, and library systems, based on their volume of photocopying;

It will distribute royalty payments to copyright holders;

And it will encourage, or enforce, participation by libraries with the Royalty Payment Mechanism.

I should point out that this is a list of six functions that we are presenting to our Advisory Committee tomorrow, and those six functions may very well change as a result of that meeting.

Also, we listed 18 different criteria by which the Royalty Payment Mechanism must be judged, and we are looking for some guidelines from our Committee, tomorrow, to indicate whether these criteria are, in fact, valid ones.

MR. NIMMER: Does that mean that you have not really started on your design?

MR. KING: We have not begun on the design. In the design, we have gone to the point where we have tried to outline what we think is necessary. We want to get some broad guidelines from our Committee tomorrow to make sure that we are staying within the proper framework.

MR. NIMMER: What is your time table on the mechanism?

MR. KING: The mechanism design is scheduled for mid-Spring of next year, including the recommendations for the Royalty Payment Mechanism. Our survey should be completed by January. The results should be out by February. We should be able to make our recommendations from those results.

One of the reasons that we need to collect so much data is that there are three possible ways that the data might be collected.

One is that it could be a complete census of all libraries, and all photocopying that takes place.

Another is that all libraries might send to the clearinghouse a sample of every nth photocopying that takes place -- every tenth, or every hundreth, or whatever.

Another is that one might take a sample of libraries, and use that as a basis for judging the amount of photocopying that takes place for libraries that have similar kinds of characteristics; in which case, one might rotate that sample to different libraries every year.

The amount of photocopying and the amount of use of journals and journal articles tends to be highly skewed (that is, a small number of journals account for a great number of the use for photocopying). This means that there may be a different kind of mechanism for different kinds of journals, based upon their amount of photocopying, or the amount of use.

Whether or not this is a possibility, I am not sure. I, personally, feel that it is something that should be seriously considered.

I want to reiterate that we feel that the survey is going along quite satisfactorily, thus far. We are concerned that we get the full 370 libraries into the sample, because this is so important from a statistical standpoint. We are making every effort we can to make sure that this happens. Thus far, we seem to be getting very good cooperation from most of the libraries and, particularly, the large libraries that are more familiar with what we are doing.

That is all I have to give you on the progress that we have made thus far, and I would certainly welcome any questions that you may have.

JUDGE FULD: Are there any questions or comments?

MR. LEVINE: What do you see as the completion date of the project?

MR. KING: The survey will be completed in January, 1977, and the recommendation for the Royalty Payment Mechanism is due in April, 1977.

JUDGE FULD: Thank you very much, Mr. King.

We will recess for a few minutes to rearrange our seats.

(Brief recess)

JUDGE FULD: We can now hear from Mr. Melville Day, Deputy Director of the National Library of Medicine, who, I note, addressed us in our February meeting at that library; and from Dr. Schoolman, who is the Assistant Deputy Director.

They will describe the National Library's photocopying distribution system, of medical and scientific information, throughout its regional network.

As well as hear from you, we will see what you have to offer.

NATIONAL LIBRARY OF MEDICINE

The provision of photocopies by the
National Library of Medicine
and its regional medical libraries

By

Mr. Melville Day
And
Dr. H. Schoolman

DR. SCHOOLMAN: Thank you, Mr. Chairman.

We are pleased to have the opportunity to describe the document delivery component of the Regional Medical Library Program to the Commission.

The National Library of Medicine is committed to

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the development of a Bio-medical Communications Network to serve Health Services, Delivery, Education, and Research.

The Regional Medical Library Program is one aspect of the development of that Bio-Medical Communications Network. It is a critically important aspect, because it is built upon existing products and every-day use of unquestionable value, and requires the development of a network of cooperating institutions, each having its own prime constituency.

It therefore becomes a fundamental model by means of which we may learn and grow. The network -- being created in support of the Regional Medical Library Program -- will form the matrix for the evolution of a more comprehensive Bio-Medical Communication Network in which the Nation's Medical Libraries will always be important nodes, and the Resource and Regional Medical Libraries will be critical switching stations.

Let me explain that I am reading from a document that was written six years ago -- a document which constituted the basis for the planning and evolution of the Regional Medical Library Program.

The Regional Medical Library Program is a program designed to provide a logical basis for extended cooperation between existing institutions, in support of their fundamental constituencies, by making available to each,

the Library resources of the Nation.

In return for access to this invaluable resource, the individual participating institutions are expected to extend the availability of their own resources, beyond their prime constituency, to a much wider community. By this means, a more general access to the system and its resources will be achieved.

The implementation of this program is to be achieved through the National Library of Medicine support of existing institutions willing and able to assume these additional service responsibilities.

It is, therefore, neither desirable nor necessary to build separate institutions for this purpose.

The program objectives:

The general objective is to develop an interacting cooperating network as a model for study, growth, and development of the nation-wide bio-medical communications network designed for information transfer to support Health Service Delivery, Education, and Research.

The immediate objective is to support the development and operation of a network for document delivery for the Nation's Medical Libraries. This network should include -- but not be limited to -- the following characteristics:

Rapid and efficient delivery of documents.

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Optimal cost effectiveness.

Access to the Nation's information resources.

A National coordination to deal with that group of requests which cannot ordinarily be fulfilled by institutions of prime responsibility; and take into consideration the broad variation and resources and users across the Country.

The network shall have the responsibility of providing access, in an ordinary fashion in the Nation's Health /Science Resources, in order to supplement -- not supplant -- supplement general formal and informal pre-existing arrangements, and shall provide for access to the information retrieval system for Health/Science practitioners and educators removed from major medical centers.

The operational model:

The general model is a system designed in a hierarchical nature with each higher level facility acting as a back-up resource to the echelon below.

There are four levels:

(1) The so-called basic unit level, on the assumption that every community in this Country may be thought of as having a fundamental continuing education obligation. The basic unit is best considered as, essentially, an independent, free-standing, educational organization.

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This would include -- but not be limited to -- the following:

Community hospitals;

Colleges and junior colleges with meaningful Health, Science, Education and Training Programs;

Other health-related schools;

Research organizations of governmental agencies.

(2) The second level -- the so-called Resource Library level: This level will be made up of selected institutions with meaningful resources that would be designated as Resource Libraries. In most instances, these would be the libraries of the Nation's Medical Library.

(3) The third level is the R egional Medical Library.

(4) The fourth level is the National Library of Medicine.

The specific responsibilities:

(a) The National Library of Medicine shall be responsible for network management and control;

For national coordination of planning.

I should point out that it says, " * * * national coordination of planning * * * :, not the planning of the National System.

Back-up resource for the Regional Medical Libraries;

Act as a Regional Medical Library for the Mid-Atlantic States. That is, as I will show you in a moment, we are not only operating as the back-up for the Regional Medical Libraries but we also are a Regional Medical Library.

The Regional Medical Library shall be a back-up facility for the Resource Libraries in the Region;

Shall be responsible for the planning of a coordinated system within the Region for the provision of Library services;

Shall indicate how resource and project grants, which have regional implications, fit into the Regional plan. This indication shall not include quality judgements of proposals for grants, because that is the prerogative of the Bio-Medical Library Review Committee--which is our "study" section, in the NIH sense.

Shall be a back-up for the educational activities, supplying coordination and expertise in support of Resource Libraries' education efforts within the geographic area of their responsibility.

The Resource Library:

The Resource Library must have the capacity to operate as a meaningful node in the network. I will return to this point a little bit later.

Its responsibilities shall be to support the

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information needs of the basic units located within its geographic area;

To join with other Resource Libraries within the Region, in a coordinated effort to support network development, including coordinated regional acquisitions with a recognition of the RML back-up role;

To undertake such coordinated educational activities, for the basic units in the geographic areas, as it deems necessary for the implementation of its plan.

The basic unit shall indicate its willingness to underwrite the continuing cost of its participation. These include, but are not limited to, an adequate staff to supervise and manage the resources within the basic unit, and to assure effective communication with the Resource Library; and also includes being responsible for communication charges between the basic unit and the Resource Library.

That is a document that was written six years ago; and we proceeded from there.

(Slide No. 1) Let me just recapitulate, for a moment.

As I described, the structure is "hierarchical", the National Library of Medicine being the ultimate back-up library for eleven Regional Medical Libraries--of which we are one.

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There are, approximately, 100-plus major Medical Libraries in the Country. The network utilizes the services of eighty-one. The discrepancy is largely because there are a number of major resources in a single city. For instance, there are four Medical Libries, plus the New York Academy of Medicine in New York. There are five plus the Philadelphia College of Physicians in Philadelphia. There are five plus the John Crerar Library in Chicago. So that the difference between the eighty-one that are participating as active members of the Node is the result of multiple libraries in a single geographic area, where one has been designated.

There are potentially approximately 8,000 so-called basic units. Of those 8,000 potentially basic units, approximately 3,000 are direct participants in the network. The major reason for that number -- which appears to be a small fraction -- is that, of the 7,000-plus hospitals in this Country, there are only about 2,000 that have library resources and, depending on how you define "library resources"; and defining it liberally, the number is 2,000.

We have expended more than, or nearly, $10 million to develop resources at basic unit levels through the grant programs in the National Library of Medicine.

In many instances, these hospitals are too small

to be able to support a continued Library Resource by themselves; and so we have urged the development of consortia where three or four such small hospitals share the library resources, and we anticipate that we will continue to expend at about the same rate that we have in the past -- more than a million dollars a year -- for the acquisition of books and serials-- books and journals -- at these local levels, and the development of such consortia.

Now, the Regional Medical Libraries operate in the eleven Regions.

The New England Library Region is the Regional Medical Library at Harvard.

At New York, in the northern New Jersey area, the Regional Medical Library is the New York Academy of Medicine.

In the Philadelphia, Delaware, and lower New Jersey area, the Philadelphia College of Physicians is the Regional Medical Library.

In the lower Southeastern area -- Washington, Maryland, Virginia and North Carolina -- it is the National Library of Medicine.

The Library at Emory is the Regional Medical Library in the Southeast; the one at Wayne State, in the Mid West.

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The John Crerar Library, in Chicago: for Illinois, Indiana, Iowa, Wisconsin and Minnesota.

The Medical Library at the Southwestern Medical School of the University of Texas at Dallas for that Region.

The Medical Library, at Omaha, for that Region;

The Medical Library at the University of California at Los Angeles for that Region, which includes the "Y";

The Medical Library at the University of Washington, in Seattle, which includes Alaska, is the Regional Library there.

There are, in addition, as another part to the Bio-Medical Communication Network, approximately 1,000 terminals, which have access to our outlined bibliographic systems, which are scattered throughout the Country in approximately 500 institutions. Each of these institutional agreements includes making the terminal services available to the community-at-large, and outside of the constituency of that institution itself.

Well, now, we have described the structure for a Document Delivery System. The next problem was the question of setting certain standards, and describing the dimensions with which we would be concerned.

Let me interject for a moment that, while I am familiar with the data, obviously, that is on these

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view graphs, there is more data on them than I can keep--accurately--in my head. So if you will permit me to approximate the numbers, and supply for the record the exact numbers later on, and understand that I am rounding out from memory when I cite numbers from now on.

The first thing that we did was to say that, "We have a problem which is a philosophic one--between librarians' commitment to service and the efficient operation of a network - - namely, that the librarian's goal is 100% completion. 100% fulfillment. That is, quite properly, their professional goal, but the nature of almost all things being what it is, the rate of expenditure increases astronomically in relation to the percentage of increase and fulfillment--after you reach a certain point. So that 100% fulfillment -- even if it were theoretically a possible goal -- is practically an impossible goal to achieve.

So, we had to make a different type of approach to this problem; and one of the things we said is that the networks shall assume the responsibility, not for every serial in the bio-medical world, but it will assume responsibility for 6,000 serials.

Now, how did we arrive at 6,000 serials?

Well, data similar to that which was presented to you earlier, but even more concentrated in the bio-

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medical field, would indicate that as few as 1,000 serials would account for 70% of all requests made. Even if that data is 100% in error, it would be 2,000; and, in order to deal with the anxieties of librarians and others; and in order to allow for any kind of error that you can imagine--and because it really does not make that much difference--we said that 6,000 was a nice number that ought to keep everybody happy, because we knew we were way beyond the meaningful number, which is probably something of the order--depending upon where you want to set your sights:at 90% fulfillment, or 85% fulfillment -- at somewhere between 2 and 4 thousand.

Besides that, as you know, Index Medica covers approximately 2,300 serials, and Med Line covers approximately 3,000 serials. So this is, also, twice the number of serials in Med Line.

The second thing we wanted to do was to establish standards of performance, Now, these are particularly important, for a number of reasons:

First of all, the cost of doing business is highly related to performance in doing business, because the most "expensive loan" is the one you cannot find! The cheapest one is the one you can pull off your shelf without any effort at all.

In point of fact, if someone asks for something

that does not exist, that is the most expensive request of all, because one can search forever and expend an enormous amount of time, energy, and so on.

So we said, "We cannot afford this luxury of searching to the exhaustion of all of your professional capabilities in the system."

We, therefore, said: "Anything that you fill, you must clear -- 85% in four calendar days, and 100% in seven calendar days. Anything that you cannot fill, must be 85% cleared in seven calendar days, and 100% cleared in ten calendar days."

Now, what does it mean, "Cleared"?

It means sent to the next highest echelon.

Now, we had other standards. We said, "When we come to the issue of describing what we will pay or reimburse people for doing business; in this field, we are going to base the reimbursement that we will provide on a "filled/loan basis", and, in calculating that "filled/loan basis", we will include a consideration for that percentage which is unfilled. But,"unless you can fill 80% of the loans that come to you -- requests that come to you -- we are not going to do business with you at all!" Or,"if you want to be a part of this network, you are going to have to be reimbursed as though you filled 80% of your

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loans, even if you are only filling 40%! And, at that price, of course, it would cost you more and more to participate."

So one of our criteria, then, was: to be a Resource Library, you had to be able to fill 75 to 80 percent of all acceptable requests that were made to you.

Now, we, then, examined a series of -- before I go to that, let me answer the question, "What are we doing in terms of traffic in this system?"

I will just give you the 1976 data.

The 1976 data for the ten Regions of loans that we have reimbursed --the National Library of Medicine has reimbursed -- is 522,000. The National Library of Medicine, itself, has provided 206,000. That 206,000 is, in part--approximately 40,000 -- due to its role as a Regional Medical Library for this Region. The remainder of its requests come from the other ten Regions and its back-up role for the Regional Medical Library.

Therefore, there are 700,000 -- approximately 725,000 -- loans that have been reimbursed by this network.

Now, how many requests have been made? The network, as a whole, operates at approximately a 90% fill rate. So that there are, roughly, 10% more--using rounded off numbers -- than -- than 800,000 requests to the network for loans that are reimbursable. But, if we consider the Regional Medical Libraries and the Resource Libraries, here,

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where data is not very good, the estimates are that the reimbursable loans count is somewhere between 40% and 50% of the traffic.

So, assuming it is 50%, there are, then, 1-1/2 million requests of the network. But even that is an underestimate, because it does not account for any inter-library loan traffic between basic units--of which there is a considerable amount.

This is only the inter-library loan traffic at the resource level -- the Regional Medical Library -- and at the National level.

So one can say that here is a network which has, requested of it, approximately 1-1/2 million to 2 million loans a year; which fulfills 90% of the requests it accepts; which does so in terms of its filled loans, with more than 90%, in four calendar days and, as a matter of fact, more than 50% in 24 hours of through-put. That is, the through-put of the library that is filling the loan. That is not user-to-user turn-around time. That is the time it takes to clear the loan--from the time the request is received, to the time the loan leaves the library.

I think that is, really, quite an extraordinary system, myself, and it is, I think, far better than anything else that exists--in dealing with this problem.

Now, what does it cost?

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Well, there are two separate issues, to the cost question, which I should like to comment on.

The first is that it is perfectly clear that there is no such thing as interlibrary loans for "free."

There is no such thing as "free" information/

There is no such thing as "free" interlibrary loans.

There is a cost of providing interlibrary loans; and ther there is a question of who pays the cost.

Now, first, I would like to deal with the question of: "What is the cost, as we see it, in this system of providing an interlibrary loan?"

Then I would like to talk about the question of: "who pays the cost?".

Now, what we have done--in terms of reimbursables that we pay for is: We have examined a series of studies; one that we did; one that was done by Carol Spencer at the College of Physicians in Philadelphia; and one that was done by Verne Pings at the Wayne State Medical Library.

From those, we have extracted a series of items which we consider to be of importance in costing interlibrary loans. Those items include the following:

Labor -- which is the cost of receiving requests; coding; sorting; alphabetizing; pulling from the shelves; checking; photocopying; for sending, referring, and notifying; for re-shelving. Administrative supervision,

including the keeping of statistics;

Postage, supplies, communication, data processing, and cost of photocopying.

Now, we have said that we cannot develop a national single value, because the labor costs vary so tremendously from Region to Region that it would be unfair and impracticable to do so. But we do have a National Standard for determining what that cost will be.

These are the items that are allowable.

Every Regional Library fills in what it considers--and justifies what it considers to be its cost under these same items--and, then, on the basis of our experience, we either accept, or audit their proposal. If it is within 10% of our own estimates of what it would be, we accept it. If it is not, we audit it.

That is, basically, what it amounts to.

Now, as a result of this activity, in 1971, the average reimbursement that we made was $2.28 for an interlibrary loan, and, in 1976, it will be $3.58.

That is the average. It will vary about 30%, plus or minus, in general, depending upon the labor costs.

Now, I would like to make some comments about that, to make clear what may appear to be very marked discrepancies between those numbers and data with which you are familiar.

In the first place, we are talking about a

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system that I have described to you--in which this network can fill 90% of the requests that are made to it.

In the second place, what we have said is that when you examine the proposals of costs for interlibrary loan, one of the largest elements is professional-librarian time. This element exists because, when you cannot pull the requests off the shelves, then it begins to get expensive--and somebody then starts verifying and searching.

We have said, "We don't want you to search. If you cannot pull it off the shelf, send it to the library with a better chance of filling it than you've got."

When it gets to us, and we cannot find it, then we will verify that, and we will search--within our judgement--what is reasonable to do. So we do not pay for the search for the non-existing item! We will not allow it!

Now, let me make it clear that--in case there is any question in any of your minds--I am not a librarian. I am not so naive as to believe that this has markedly influenced library practice in this network. The fact of the matter is that I strongly suspect that the same practices are still going on as though we were paying for it; and the costs are being absorbed by the institution. It is very difficult to be absolutely sure of what the effect would be if they really did what we said they should do--in terms of reimbursing them--if the librarians did it.

We have done some preliminary studies in our unique situation, and we have not been able to demonstrate, at the National Library of Medicine level, any significant difference in fill rate between verified and unverified interlibrary loan requests that come to us. But you must remember that they have all been "filtered;" all but those that come from Region 4. They have all been filtered by ten Regional Medical Libraries and 61 Resource Libraries, before they get to us; and I suspect that that which is labeled "unverified" in that group, has been verified or, at least, a certain number of them have been filtered through some professional library. So I don't know what the answer is.

Nevertheless, our costing is predicated on the assumption that it does not pay to verify and look for things in a system, where you have an 80% fill rate at the first level, and 90% fill rate at the end, until you have exhausted the ability to pull them off the shelf, and that can be done with two referrals.

Now, if you have a system where you have only 40% fill rate and it is dispersed all over, then you have a different situation entirely; and, then, the value and cost of verification -- which is an enormous part of inter-library loan cost -- has to be viewed in a different light.

By the same token--since we pay people on the

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basis of filled loans--we adjust this rate to accomodate their "referring", or unfilled, proportion. The actual figures, I don't remember, exactly, in Carol Spencer's paper, but let me invent some, to illustrate the point I want to make.

Let us assume that the cost by this method of cost-accounting-per-transaction is $1.50. Since we will not accept anything less than a 75% fill rate, converting that per-filled loan adds 25% to that $1.50, and makes it $2.10, roughly, or thereabouts. But, in a situation where someone was filling only 40% or 50% -- to make the arithmetic easy -- then that conversion would make that "cost-for-filled" loan be $3.00 a loan.

Now, we won't permit anybody to operate in this network who can only fill 50% of the requests that come to him. We say, you know, "You are not efficient enough to be a worthwhile stopping place for an interlibrary loan request."

That is a very important consideration, in terms of what the cost is for interlibrary loans.

As I said, the principle on which this network is founded is based on the assumption that there ought to be -- at the local level--those resources that are necessary to provide the user with the major portion of his needs.

Now, how do we define that?

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Well, we don't really define it, but we use the implications of the kind of curves that you have been exposed to many times. If you plot the number of requests against the number of serials at any level, you get the same shape curve. It is just displaced one place or another, depending upon what library you are talking about.

The inflection point where it begins to flatten off varies, depending upon the level of the library, but somewhere between 55% and 75%, that inflection point has a curve, and that curve becomes very flat and it, therefore--at that point of inflection--becomes no longer profitable for that resource to add resources, because it has to add an enormous amount of resources to make any significant increase in its fulfillment of requests.

What we, basically, say is: "That is the point that every library should be operating at."

Now, of course, they don't! A relatively few operate before they have gotten to that inflexible point, and those are, basically, hospitals without libraries at all. They have a "reading room," but they don't have a library!

The Resource Libraries and the Medical Schools tend to operate way above that inflection point. And, of course, we operate at a ridiculous level, but we have a National mandate to an Archival function; so that the

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National Library of Medicine probably has no more than, I would guess, 15% of its resources being used 85% of the time, and 85% of its resources are used only 15% of the time, and I would guess that, maybe, 50% of our resources are used less than 1% of the time. But we have a National mandate to be an Archive.

I said that the network deals with 6,000 serials, but the National Library of Medicine -- which is, of course, at the apex of this network -- actually gets 20,000 serials a year. So, in point of fact, the 6,000 is only a guideline, because they are identified as to what is in scope for the network at the resource level.

There is a great deal of gray area between Medicine and other fields, and the 6,000 established for any participating library; whether a journal which is in an allied area would be covered by this network activity.

Now, I said there is another side to the question: namely, the issue, "Who pays"?

Now, very early on we started to attack this problem.

The first proposition that was entertained was that the National LIbrary of Medicine should seek Congressional funds to underwrite the cost of all interlibrary loans in the network. This proposition was discussed, for two years, with a very large group of

people: the Regional Medical Library Directors; their advisory committees; our National Board of Regents--which is a policy governing Board for the National Library; and many others. I think it would be erroneous to say that there was a unanimity of opinion, but there was a very large consensus that it would be ill-advised to create a system that was based upon a monolithic funding principle which was so susceptible to significant fluctuations that could seriously disrupt it with relatively minor cuts in budget--especially in an arena which was expanding, in terms of the cost of doing business, on a very rapid basis, and at a rate that was greater than the expansion of the National Library of Medicine budget.

So I think that everybody agreed that, for that reason -- but also for other reasons -- it was unwise to seek to support this system in a monolithic fashion, through Federal funding.

The problem next became -- since the National Library of Medicine was not going to pay for it all: "What was it going to pay for?"

Now, in principle, what we said was that it seemed reasonable to return to our basic notion that those resources necessary to fill those requests, up to the point of inflection on this curve, be held locally, and be local responsibility, and that we would continue -- through our

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Grant Program -- to help support acquisitions of books and journals to bring people up to that level--providing they accepted the responsibility for the maintenance of those activities, once they were created.

So we said that, as a general principle, that which ought to be held locally at any level ought to be the responsibility--also from a fiscal point of view--locally; and that which is above the inflection point -- roughly 30% of the traffic -- but, depending upon what you are talking about, it should be the responsibility of the National Library of Medicine--plus it should be the responsibility of the National Library of Medicine to support the administrative and other costs associated with the maintenance of the network in order to be able to provide the kind of service I have described.

So that gave us another leg up. But the definition of this point of inflection is still under discussion. We have moved toward the point of inflection by the introduction of stop lists: fifty serials at the basic unit level; 100 serials -- varying from Region to Region. But now we have engaged, in the last year-and-a-half, in a much more definitive discussion. And we are meeting, in the middle of next month, to begin to finalize our discussion in this regard.

Now, what we are clearly moving to is some

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sort of implementation of the notion that I described -- basically on a Region-wide or State-wide arrangement.

One Region has already gone to a system where the Region, itself, is responsible - - fiscally responsible -- for any loan that is delivered by resources that are held within the Region. In some shape or form yet to be determined, I think that this is where we will be evolving.

Now, how do you pay, or who pays--even under those conditions?

Well, I think we have all accepted the notion that user cost is not an anathema. It should not be rejected out-of-hand; which, I think, was a prevalent attitude, ten years ago.

On the other hand, many people are not willing, by any means, to accept the notion that user charges should underwrite the total cost of the activity.

The one most disturbing aspect to me--of the introduction of user charges -- and I would like to try to be as explicit as possible in this statement -- is that when that activity begins, and a library starts generating revenue, then,--especially in times of fiscal constraint,— in the minds of university Administrators, it is a very small leap to the assumption that libraries should become self-supporting. And this, I think, would be a catastrophic notion, if it were introduced!

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Libraries are public institutions and they--basically--should be underwritten by public funds, for the good of Society. That, however, does not preclude that the library should charge for services. It does preclude that its operating costs should be sustained by its own revenues. I think that distinction is a terribly important one to maintain, and it is the one thing which I fear most--as a result of the introduction of user costs by libraries.

State systems have been alluded to, and various other means of partially subsidizing the cost of inter-library loans will undoubtedly be developed. Our problem, at the National Library of Medicine, is to try to make sure that there is not a widely divergent cost to a user, depending upon his location, because we have a mandate to equalize access to the bio-medical information, independent of geographic location, and although we do not believe that that mandate dictates that if someone is going to be charged, he must be charged exactly the same, no matter where he is located, we do believe that if there is a charge which is significantly great in some locations, that difference becomes an obstruction. If that difference is significant enough to become an obstruction to access, then equal access is, indeed, being impeded.

We have worked very hard with the Regional Medical

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Libraries and their advisory groups, and the Resource Libraries, and they have been very cooperative. We believe that we will be able to agree -- at least upon a National maximum charge at any given year.

Now, that does not mean that the National maximum charge will become a user charge. It will merely mean that if user charges are imposed in any given locality, the user charge cannot exceed the National maximum charge.

Well, I am not sure that I missed the view graphs. This has, I think, shortened my presentation. You may have missed something that I wish I had told you, had I seen them but, by shortening the presentation, I hope that that gives you more opportunity for discussion and questions. Mr. Day and I would be pleased to try to respond to your questions.

JUDGE FULD: What went wrong with the machine?

DR. SCHOOLMAN: The lights blew out, as I suspected they might, because we were improvising.

JUDGE FULD: Are there any questions?

(No questions)

JUDGE FULD: Apparently, you have satisfied us all. Thanks very much.

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COMMISSION DISCUSSION

JUDGE FULD: Mr. Frase will advise us as to a meeting that was had in Princeton last week.

MR. FRASE: We held a meeting last week in cooperation with the National Inquiry on Scholarly Publication Communication, in which we tried to bring together a good many people who were working on studies of interest to the Commission and to each other.

Mr. King was there; Mr. Palmour was there; Mr. Edward E. Booker; and Dr. McGad of the Study on Scholarly Publication Communication; Dr. Fritz Macklup, the Economist for NYU, who is doing some economic studies involving publishing in libraries; Mr. John Dessaer, who is a Statistician for the book publishing industry, and a number of other groups, doing annual surveys; Dr. Shick, who is in charge of the periodic and special library surveys of the National Center for Education Statistics.

I think it was a profitable two-day meeting, showing the interrelations between these various activities. I think it will lead to better coordination among them, and I think one specific thing we managed to do was to sort out some difficulties of overlapping between three types of library surveys which are going on, which will help on the library survey that Don King is doing, and the second round of Bernard Frye's study, to bring up his

Library data for an additional three years.

There was some sentiment expressed at the meeting that we ought to try to do this again--about next summer. Nobody volunteered to put up the amount -- there was a modest cost involved, but it is quite conceivable, I think, that it could be done on a "Dutch treat" basis, the next time around.

Commissioner Wilcox was present, and she may wish to say a word about it.

COMMISSIONER WILCOX: No!

JUDGE FULD: She declines the offer.

MR. FRASE: That concludes what I wanted to say.

JUDGE FULD: Mr. Nimmer?

MR. NIMMER: Well, I just wanted to make a comment about the direction of our hearing today.

I suppose our general topic here under discussion -- photocopying -- involves, in a sense, two different elements:

(1) The problems of libraries; and the other,

(2) The question of copyright with reference thereto.

We heard a good deal today about the economics and other aspects of the library problems in photocopying, and, certainly, much of it is relevant. But I wonder, perhaps, if we have heard more than we need to know.

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In any event, what it seems to me that we do need to know--and what we have not heard up to now--is what I think of as the technological side of photocopying.

What is the existing situation with reference to Xerox, for example?

Here I use the term in its technical sense:

The nature of their leasing or sale of their machines; how they get paid, and so on.

Then, also, the technological side, in terms of, "How is it possible to beat the machine?"

What can be done; what cannot be done; technologically?

All of which, it seems to me, is relevant on the question of: If there is going to be some kind of mechanism for royalty collection, we have to know about what the technological side of the machines may be, so that we know how that can gear with a royalty collection scheme--without going, at this point, to the question of: What should be the payment, and for what kind of uses the payment should be.

We have already passed that, to a degree, in connection with the guidelines--even if that may be reopened in terms of our long range recommendations.

In any event, it seems to me it is terribly important that we get some of this hard data on the machines themselves--rather than have very much more on the economics

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of the libraries in photocopying. That is relevant, but there is a limitation of what we need to know on that.

MR. LEVINE: Just in response to that: We are, and we have been, in touch with representatives of Xerox, Inc., and we, in fact -- some of us, in fact -- had viewed some of the operations of some of the Xerox subsidiaries; and we hope to have, in, other technical people from the large photocopying organizations to give us that, and that "type" of information.

There is, now, some very interesting work being done in machinery -- as I think some of you know -- linking the photocopying machines to computers, for purposes of recording photocopying frequency.

We certainly expect to get that in.

I think, as this has been our first meeting on photocopying -- - I think it is important that we get into the record some of the experiences of the large research libraries in their photocopying.

MR. NIMMER: I just wanted to make a point for the future.

JUDGE FULD: Yes, Professor Miller?

PROFESSOR MILLER: I don't have a copy of our Statute here in front of me. In the use of the word "photocopying": is it limited to photocopying in the classic sense of literary material on a machine?

For example, is it clear that it would not include such operations as the Sony Betamax System?

MR. FRASE: It says, "Machine reproduction".

PROFESSOR MILLER: It strikes me that, as you start to think about multi-media systems, and the potential linkage between photocopying and computer, that there are other audio-visual techniques with photocopying aspects to them. I don't know whether they are technically, literally, or philosophically, within our charge, or not.

JUDGE FULD: Would not "multiple reproduction" cover it?

MR. NIMMER: What you are talking about is video tape?

PROFESSOR MILLER: Video tape from a broadcast medium; video tape from a computer medium; video tape, or any form of reprography from another medium -- or regardless of medium -- microfiche ; computer; broadcast; digital; and photocopying,

MR. NIMMER: Well, there is long distance facsimile transmission, too.

PROFESSOR MILLER: Well, we had all of this background information on networking, and vision of the future, which we got several months ago. Part of that vision was a sort of a home entertainment education center, which was multi-media in character, and has a wide range of copyright implications. I don't know how big the apple is.

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JUDGE FULD: You are suggesting that we get into that?

PROFESSOR MILLER: I am suggesting that we think about whether we should go into it in detail.

MR. NIMMER: I think that is a good suggestion. Perhaps the members of the Staff and the Commissioners should each look again at our chart and think about it, and let's have another session in which we talk about that jurisdictional question. It involves a lot - - such as the Vanderbilt University problem.

PROFESSOR MILLER: Right!

MR. NIMMER: For myself, I would be interested in getting into it, if the Commission thinks it is appropriate.

MR. LACY: Mr. Chairman, I would like to say, also -- just as I said this morning -- it seems to me that Mr. Palmour's study was accepting the present mode of publishing journal articles and equivalent documents as given; and trying to address a system to it.

I think we all, quite consciously -- both the Congress in producing Section 108 of the Bill, and this Commission in producing its guidelines to interpret one sub-section of that -- we are addressing ourselves not only to an existing structure of publishing dissemination, but to an existing structure of interlibrary arrangements, and both of those may be changed radically--either by technology, or by the evolution of new structures, such as this Center we talked about this morning.

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I think all of us, on both sides, felt that what came out of the guidelines was very workable, and very practical. It certainly owes a lot to the constructive statesmanship of the Library and members of this Commission.

It was an interim sort of thing. I think everybody felt that. In fact, a lot of us felt that the guidelines should be reviewed later. I was hoping that we could give some thoughts to what modes of document reproduction transmission may develop in the future, and try to erect a copyright structure that would give incentives for investment, development, and use of that, and would be designed not to impede development.

This is something that I really think is wide open. I don't think anybody really thought -- certainly not I, or other people I talked to -- thought through it very clearly, yet. It is a complex and difficult subject.

Ten years from now -- because what ultimately emerges will likely be the law for a long time -- ten or twenty years from now, what is likely to be the typical way one goes about getting the total of a journal article, for example?

What if the Copyright Law was to facilitate or impede that? That might be a quite different system. The whole publication of it might be quite differently done. The library structure might be quite different.

MR. NIMMER: It occurs to me that my statement might be misunderstood by some of those present.

The main point I wanted to make was as to the

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direction our future investigation in photocopying should take.

I think there are some present, who have been invited here, and who will be making presentations to us tomorrow, perhaps, along the same lines we heard today. I don't mean to suggest that we will not be interested to hear what you have to say. We will be!

At the same time, I hope, to the extent that you can, that it can be directed not only to the existing economic problems but, also, to your view of the future--and what kind of control mechanisms might be appropriate.

MR. WEDGEWORTH: I am not sure that there was a misinterpretation of your remarks, Dr. Nimmer, but I think it might clarify matters if we recall that a part of the discussions that are taking place today probably would have taken place much earlier in the history of the Commission had we not made a deliberate decision that we were going to postpone consideration of this topic--but discovered we could not do so. I think that it does seem a little bit déjà vu if we look at it simply as photocopying in libraries. I think what we might see is that this activity -- as Dan has alluded to on many occasions -- constitutes a very large percentage of the use of certain kinds of works under copyright, and our view of it is whether it is hard copy, or some other kinds of devices, it is likely to

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continue to be a significant network for use. And I think that the problem is more general, as was suggested, and I would like to see us move, to look at some of the technological considerations as you suggested, so that we can start talking in terms of what are compensible or non-compensible uses, as came up in our previous meeting, because I think that that is the issue that will be facing us, and not whether we are talking about photocopying in libraries, or the use of the Sony Betamax--or whatever piece of equipment might be involved.

JUDGE FULD: Are there any other comments?

PROFESSOR MILLER: Is there any way to get at the world of photocopying as it is traditionally viewed, as long as tradition is in this field -- outside of the library? Industrial photocopying; corporate photocopying; law office photocopying?

Because I really have my doubts that library photocopying represents the invisible portion of the iceberg that we are dealing with.

MR. WEDGEWORTH: Very small!

PROFESSOR MILLER: My guess is that the scale of industrial photocopying is significantly greater than is library photocopying, and we have not heard a word on that!

Indeed, there has never been any public debate

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on it!

MR. WEDGEWORTH: Would it be possible to get some statistics from some of the major manufacturers who have remained conspicuously silent in all of these discussions of this issue?

MR. PERLE: They don't want to know!

MR. FRASE: I would like to make two comments on that:

(1) Don King's study is sampling industrial photocopying.

As I said, he sort of emphasized and increased the sample on that because, under the Revision Bill, unless those industrial establishments are open to the public, or qualified researchers -- including their competitors -- they don't get any concessions at all. So we will, for the first time, I think, get some information on that.

The other thing is that we can invite some people to come in from that side and give us their information, advice, and problems. Whether those invitations would be accepted, or not, I don't know.

MR. LEVINE: Without appearing to be heavy-handed -- that is not the intention of what I am going to say -- we do have subpoena powers to get those people who do not come in willingly. So we do have something!

MR. HERSEY: There are two other kinds of photo-

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copying, too. Students' photocopying outside of the teaching situation, and photocopying in copying mills. I don't know whether either of these are measurable or controllable, but they certainly are very much under siege; and I don't think we have looked at those.

COMMISSIONER WILCOX: I am wondering -- as a point of clarification -- if what Mr. Miller is doing, and what Mr. King is doing, are the same thing because I believe he is looking at special libraries in industries, rather than industry.

Is that correct?

MR. FRASE: Well, I don't know whether there is that much distinction. Take the Exxon Corporation photocopying. They probably have two kinds: one that the library does, both from existing material, and through interlibrary loan. The other is: In some establishments, they have photocopying machines around which are not supervised and which are not charged for.

PROFESSOR MILLER: Sixteen years ago, before I lost my way in the Academic World, I was practicing law with a firm that shall remain nameless, that had offices in Paris, Brussels and Washington. The senior partner asked me, "What are the copyright implications? Would you do some research on the copyright implications of our Xeroxing the Law Week every Monday, and sending it to our three

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other offices?"

I said, "I don't have to do any research to answer that question!"

I gave him the answer, to which he replied, "Don't write it up"!

I think that that kind of copying is different from library copying, and I think it is also different from the unsupervised machine. It is an institutional policy of replication for in-house use which I assume, in a place like General Motors -- and I am just using that off the wall -- it may be in a place like the Xerox corporation --

-- could achieve rather astronomical proportions in terms of thousands of engineers.

MR. WEDGEWORTH: You don't even have to go outside of the educational communities. If you take a major university, and if you were to add up the traffic on, say, the machines in the Law School Sociology Department, the Physics Department; the Chemistry Department, and compare that to what they are looking at in the library, it is insignificant, and I know--because we used to pay the bills.

DR. DIX: Well, just to put a box around it, the

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problem is to isolate the photocopying of copyright material in that kind of a situation.

MR. WEDGEWORTH: Yes. Yes.

DR. DIX: Most universities, I know, have now begun to coordinate this kind of copying, and it would be possible to find out the total volume of Princeton University, for example, but it would be impossible to find out how much of that was unauthorized photocopying of copyright material.

MR. NIMMER: It would be impossible to find out specifically, with particularity, but it seems to me that what we clearly should do is try to determine how we approach the problem of these entities, and then obviously the relevant inquiry -- or one relevant inquiry -- will be precisely that.

I should not assume that we cannot get some helpful data, but it will have its limitations.

It seems to me this is very important and we, or the Staff, have to determine very quickly how we go about getting that kind of information; and I certainly would not preclude use of the subpoena power, if that appears to be necessary.

DR. DIX: There is one more issue.

John Hersey mentioned copying "mills". I think you referred to them that way.

I should think it might be possible to get some

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data there, from one or two commercial agencies that do a very large amount of copying, and some sampling of what they actually are doing might be useful, I should think.

JUDGE FULD: Alice?

MS. WILCOX: We may go back to some of the things that Professor Nimmer said. It seems to be exceedingly important, in view of the fact that the Commission is involved with the study to set up possibilities of a clearing house or a center for some of the technological implications -- the future ones -- the possibilities not only of the two that we talked about, but also the micro-storage, you know. Microfilm and microfiche impacted so heavily on that, that it may radically shift the basis for having a centralized, versus a decentralized, system.

So that I think it is very important, if we could get some of that testimony to help the people doing the studies because, otherwise, they are at a disadvantage.

I think that is especially appropriate in some of the -- what you may, perhaps, refer to in the Ann Arbor visit.

MR. NIMMER: That suggests two different, separate fronts along which we should be proceeding: The technological side, and the commercial photocopying side.

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MR. HERSEY: Another thing that we touched on from time to time, but have not gone into is reaching the stage of deciding what is compensible, and the need for some controls.

What sorts of devices and controls might be possible?

The King study is going in one direction, but there have been at least a dozen various means of control and election, and so on, that have been put forward in the past, and we ought to know the range of those devices as we start thinking about that.

MR. LEVINE: What do you mean by "devices"? They are not machine devices?

MR. HERSEY: No. No. Plans.

MR. LEVINE: We are in the process of getting those together.

I wonder if I can just go back to the commercial photocopying question.

The question there is: Is there photocopying being done that constitutes what we traditionally believe to be infringements, now?

Is it the question of volume that we are interested in?

MR. NIMMER: Clearly, there is a question of volume.

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What kinds of institutions tend to do more of that sort of thing than others, and how does one identify it, if it cannot be defined in terms of classical institutions, or whatever?

PROFESSOR MILLER: Knowing the dimension of the problem, and the location of the problem, and the different quantative levels of the problem in different locations, might provide some insights in thinking about the point that John just made. That is: methodology of control, and enforcement of the compensation scheme.

It might alter your thinking of a clearing house, versus a machine tax, or a machine toll, or an actuarial sampling of machine-by-machine or location-by-location.

I don't see how we could conceivably even approach a judgement on that, without knowing where the machines are, and what they are doing.

MR. WEDGEWORTH: I think that one of the very sore issues that still remains with respect to libraries and photocopying is that many librarians felt that, during the period that we went through these intense discussions, that libraries were really being held hostage for an activity, simply because they were easy to identify, when the bulk of that activity was taking place elsewhere, and everyone assumed that it simply could not be controlled, and that we had no way of getting at

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the data.

I refuse to believe that; and I think that, in the course of our trying to exert controls over photocopying, we have, in a sense, ignored some of the basic premises that we have used to establish educational-type organizations and give them certain kinds of advantages within our Society in order to encourage their operations.

I would strongly recommend that we make some moves to try to look at the copying activities outside of these educational institutions, to see if we cannot come up with a way of looking at different mechanisms--other than clearing houses,--that will take into consideration these institutional uses.

MR. NIMMER: One obvious area is commercial reproducing companies that do nothing but that.

Certainly, that should be easy to identify and, if necessary, we should use the subpoena power. I don't know whether it would be necessary.

Then there are the major industrial giants which could be taken almost at random, it seems to me, by way of sampling, to get some kind of insight into how they operate.

It becomes more complex when you get into the middle and small entities, but there, too, maybe we can get some kind of a sample.

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MR. WEDGEWORTH: Even in that discussion, it seems inconceivable to me that, in considering how to compensate artists for the playing of works on juke boxes, that we would ignore the people who handle the juke boxes, in order to get to the places in which the juke boxes are placed.

What I am saying, specifically, is that I think we need to take a look at the people who are making the machines available and get their records, so we can get some sense of the activity. I think that we have ignored looking at the possibility of having them assume some responsibility for the infringements of works under copyright.

MR. NIMMER: And they do, I believe, have records--insofar as their royalties are paid by use, or insofar -- I am speaking in ignorance. Some of you may know more about it. It seems, as I vaguely understand it that, in part, payments are made on a lease basis. I am not sure to what extent it is geared to use.

Then there is the matter of supplies that have to be periodically given, which bears some relationship to the amount of the use of the machine. Anyway, this is an area where they could supply us with information.

MR. LACY: It would be fairly easy, yes, to try to get data on the number of pages copied. But the problem, I think, would be that the overwhelming majority of the copying is done on Xerox machines, in typical offices, of

correspondence and documents within the office. Most offices don't use carbon paper any more; they just type the letter and then go to the Xerox machine and run off as many copies as they want. And that is, I would guess -- in our company, at least -- 99.9% of the use of our machines. So the gross figures would not tell you much about the use, vis-a-vis copyrighted material.

MR. PERLE: If it is not out of order, has Xerox done any research as to the amount of unauthorized copying, or infringing copying, there is on the machines which Xerox manufactures?

MR. SAWYER: (Member of Xerox Corporation) I don't know, but I don't think so.

MR. PERLE: I would not think so.

I would think you would not want to know!

I do know that we have some ways of getting at least ahead of this, on the level of the corporation. Some of us have seen a copy of a memorandum from the Librarian of one major corporation addressed to all Department Heads, saying,

"Here is a list of the contents of the journals which we got in this week. Please let us know which of those you would like copies of."

That was routed routinely through the corporation.

MR. LACY: I know of a paragraph saying that, "The corporation will not take subscriptions to any of these

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journals other than the library subscription in view of the availability of this service."

MR. PERLE: It was a fascinating document. It really was. I do think that, with a little imagination, we, the Commission, could contact a random sample of fifty, let us say, of the major corporations, in terms of the number of employees who are engaged in some sort of an intellectual activity in America, and find out who is doing the purchasing of journals, specifically, and say to them, "We are not going to spank you. We want to know: How do you go about this?"

I think that takes a little field work, perhaps, but I think we can get at some measure of what is going on, that way. I know that it goes on in my company, for example, to a shocking extent; totally beyond our control! In my company, there is no centralized purchasing of the most frequent "pirated" -- if you will -- infringed -- if you will -- material. News letters. Those news letters are the things that everybody wants! They are expensive, and they are copied at an incredible rate. So that I think that the Staff could say to Time, Inc., Exxon, General Motors -- you name it -- "What news letters do you order? Who gets them?" And, then, either by a very structured, simple questionnaire, or by interview, get some sort of handle -- a ball park figure -- on the sort of copying that is being done and how, because we are in a funny situation where we

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know it is done! We just cannot quantify it.

MR. LEVINE: That approach might work because any other approach through a corporation ends up at the corporate library, it seems to me, with statistics if they do keep them, from the corporate library as to what their activities were.

What I think that you are suggesting, now, is to find out the nature of the photocopying that is going on outside of the library.

MR. NIMMER: You know, as I think about it, really, the question of: "Is there photocopying of copyrighted works by private industry", is almost a rhetorical question. We know there is! It is true, as Gabe says, we don't have the hard data on it. But do we really need that in order to go further than that?

We do know that it exists.

What I think we want to know is the pattern of it; what kinds of institutions engage in it more than other kinds; because this may be relevant in terms of a clearing house kind of system.

How do we keep track?

Who do we try to police?

And so on.

But the basic fact, obviously, is that it does exist. If I may call upon one of the observers, Jerry Socarr

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did a study in which you made an estimate of how many pages of copyrighted, protected works were reproduced.

How did you make that estimate?

MR. SARBIN: We used 66 libraries, if I remember correctly. We had obtained a figure of the amount of the commercial -- which was obtainable, strangely enough -- total commercial copying at that time. I think there were 19 billion pages.

Then, by having six libraries keep records for one month -- just libraries at the moment -- it was 66 -- it was 66 that gave the year's estimate of the kinds of photocopying they did. We came up with a figure of about 1 billion pages of copyrighted material from periodicals-- being copied per year, at that time.

I did not know you were going to ask me this question. I am trying to recall these things.

Interestingly enough, I hear that Predacast has done a study on the total -- you might contact them -- commercial photocopying done -- all kinds. Administrative. The figure I saw the other day was something like 300 billion pages per year. It might give you some kind of a way to measure your work.

MR. NIMMER: I forgot -- did your study do a break-down between commercial and non-profit?

MR. SARBIN: We did have special libraries and

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academic libraries; special libraries, in this case, being profit-making libraries. There was a breakdown.

MR. NIMMER: How were you able to get that data?

MR. SARBIN: By directly going to them, and asking them. We had interviewers go into the organizations and they were surprisingly cooperative at that time.

I don't know if they would be cooperative today.

We continued along that route. They were quite open.

JUDGE FULD: As has been observed, there is no question that there are these violations, and the important thing, I would think, is the way we police them, to have contro , to keep a check on what is being done.

MR. LACY: It might be interesting to call one or more publishers of news letters who use a variety of experiments in terms of low prices for multi-copy subscriptions, in terms of non-easily copyable colors of paper and ink; and in terms of releasing in pressure, investigating. They know a good deal about the issues of multiple --

MR. NIMMER (Interposing) It would be worth hearing from them.

JUDGE FULD: Are there any other comments?

MR. LEVINE: I wanted to -- since we may not at the end of the day -- discuss the next meeting.

The next meeting will be November 18 and 19, and I believ

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it will be in New York City.

We are then scheduled in December for meetings -- for a meeting on the 16th and 17th.

JUDGE FULD: That is going to be where?

MR. LEVINE: At a site to be determined.

JUDGE FULD: That sounds like New York!

MR. LEVINE: I would suggest January 20 and 21, and February 24 and 25.

(Off the record discussion)

MR. LACY: Do we have an agenda for the November meeting?

MR. LEVINE: We are working up an agenda. We expect to have that meeting, on Data Bases, again.

MR. NIMMER: Do you think that, by the December meeting, it may be possible to get back to the technological side?

MR. LEVINE: Yes! Yes.

MR. LACY: On Data Bases, what were we trying to do? Hear more testimony about what? Or will we be discussing proposals? What stage is it in?

MR. LEVINE: It would be, I think, both, Dan.

I think we would find it useful to discuss some of the ideas that you put forth privately, and I think it might be useful to have more data base producers testify, also.

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We have been invited, at the November 18 and 19 meeting, on Friday the 19th, to the Copyright Luncheon Circle, which is going to be meeting, and Tom Brennan of the Senate Subcommittee on Patents, Trademarks and Copyrights, will be speaking on observations on the revised Copyright Law from the Legislative point of view. We have all been kindly invited by Chuck Seaton, on behalf of the Copyright Society. We are to be the guests of the Copyright Society at that luncheon.

JUDGE FULD: Is this the Copyright Society?

MR. LEVINE: It is the Copyright Luncheon Circle. We will be guests of the Circle. That is on Friday, November 19. As I say, we will schedule our meetings around that.

JUDGE FULD: Unless there is something more, we will adjourn, until tomorrow, at 9:00 o'clock.

(Whereupon, at 4:00 o'clock, p.m., the meeting was adjourned until Friday, October 22, 1976, at 9:00 o'clock, a.m.)

-oOo-

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NCLIS REPORTS PROGRESS OF TASK FORCE ON A NATIONAL PERIODICALS SYSTEM

For Immediate Release

The National Commission on Libraries and Information Science has issued a progress report on plans and recommendations being developed by the Task Force on a national periodicals system. This Task Force was appointed by the Commission in January 1976, and the completion date for its assigment is scheduled for early 1977.

Background

The lending of materials by one library to another library, i.e., interlibrary loan, is a traditional means of increasing patron access to items not available at local libraries. Statistics published by the Association of Research Libraries (ARL) show that member libraries made 2,158,000 interlibrary loans during the year 1974-75. In the same period, these 99 large university and research libraries borrowed 477,000 items from other libraries. While interlibrary loan, as viewed by most librarians, was intented to be a reciprocal lending and borrowing operation among libraries, these statistics indicate that, due to the wide range in sizes and collection coverage of the nation's libraries, the reciprocal concept does not function well.

About half of all interlibrary loans made by academic libraries consist of articles in periodical journals. Most often these requests are satisfied by sending photocopies of the articles in lieu of the original materials. With the increase in the number of periodical journals published and the even more rapidly increasing subscription prices, it has become impossible for libraries, even the largest, to subscribe to and house all the periodicals their users may need.

In order to avoid cutting the number of periodical subscriptions, many libraries have reduced their budgets for books to alarming levels. This is substantiated by findings of the National Center for Educational Statistics, U.S. Office of Education, which reported from its 1974-75 survey of college and university libraries that library expenditures for books had increased only 2.8 percent in a two-year period. This was in contrast to an 8 percent increase in the average book price. Average periodical prices increased 34 percent in the two-year period while library expenditures for periodicals increased 36 percent, indicating a marked shift in funds from books to periodicals. This trend cannot continue without injury to library collections and to the book publishing industry as a whole.

In April, 1975, the National Commission on Libraries and Information Science (NCLIS) called a conference to address the problems of resource-sharing vis-a-vis its national program. Attendees, representatives of all sectors of the library community, agreed on the urgency of improving access to periodicals. One outcome of this conference was the creation of a Task Force to prepare a plan for a national periodicals system.

Task Force activities have included clarification of problems in access to the periodical literature, determination of goals and objectives for a national periodical system, identification of services and products, development of criteria for comparing alternative approaches, and specification of alternative structures of a system.

Two basic premises adopted early in the discussion by the Task Force members were: (1) the system shall provide effective and timely accessibility for all library and information users, not just scholars, specialists, and students, and (2) the system shall be built upon existing resources to the greatest extent feasible.

Goals of a National Periodicals System

Within the context of NCLIS's overall goals for a national program for library and information services, the Task Force has identified the following specific goals for shaping a national plan for improved access to periodical resources:

1. Improved bibliographic and physical access to periodical materials for all current and potential users.

2. Improved delivery of periodical materials.

3. Reduced burden on large net lenders of periodical materials.

4. More effective use of individual library funds in the provision of periodical materials.

5. Effective awareness and promotion to insure wide knowledge of the availability of the system and its services. These activities must include training and educational programs for librarians and users.

6. Improved access to the contents of periodicals, which implies seeking means for improving each step in the preparation, publishing, abstracting and indexing, bibliographic identification and control, and distribution of the materials, with recognition of the various components in the private and public sectors.

The accomplishment of these goals will require a flexible system capable of adjusting its scope, configuration, and operating methodology as indicated by experience, future demand, and available technology.

Services and Products

What services and products are required of a national periodicals system to meet the goals? The Task Force has agreed that the primary immediate need is improved document delivery. Consequently, the main service of a national periodicals system will be dependable delivery of loan or photocopies of journal articles. This service will be based on the following design features:

1. The aggregate collection of the system should be comprehensive in subject coverage to include all worthwhile journals.

2. Heavily used, moderately used, and little used materials should be available.

3. Value of content rather than language should be the criterion for inclusion of a title.

4. Initially, materials acquired for dedicated collection(s) should be built forward from a specified start date and back files developed later.

5. Initially, most requests for materials will arrive via mail and teletype, and photocopies, and loans dispatched by mail. In the near future, some requests can be expected to be sent via a computer-based communications system. Telefacsimile should also become more favorable cost-wise in the future.

6. Other special services and products will be considered for future options.

The proposed national periodicals system will operate under the copyright law. An organized system, with specified lending centers, should make the problem of accounting, for copyright purposes, much more manageable.

Pluralistic System Design

The Task Force, in its work on planning for the system is attempting to answer the following questions:

1. What kind of national periodical system is needed to meet future demands?

2. What pieces or components of such a system exist today?

3. How can the transition best be made from the existing pieces to the desired future system?

In addressing the second question, two recommendations quickly emerged: (1) the majority of routine needs for periodical literature should be met by the existing local, state, and regional library systems, and (2) the strong periodical collections of the national and major research libraries should also be part of a national periodicals system.

A number of alternative design structures for a national periodicals system have been conceptualized and reviewed by the Task Force. Alternative structures considered have run the gamut from a comprehensive union catalog that would identify libraries who would agree to lend specific titles, to hierarchical systems containing several new national centers with comprehensive dedicated collections.

In light of defined evaluation criteria, the Task Force has concluded that a three-level system is best suited to meet the anticipated future needs for periodical materials. The Task Force will now:

1. Consider ways to improve local, state and regional capacities to meet a substantial portion of routine needs for periodical literature (i.e., the first level).

2. Establish the best course of action to create, initially, a major comprehensive periodical collection with the sole purpose of meeting the full range of national needs (the second level).

3. Describe appropriate ways to assure a continuing capability to tap unique resources of national and other major research libraries (third level).

The bulk of loan requests unfilled by the first level would be met by a single comprehensive center with a collection dedicated to interlibrary loan. An unresolved question is whether future demand and delivery of services can be met adequately from a single center. Experience may show that several such centers are required in the future. Changes in technology and publishing may also suggest a more decentralized approach to this second level in the system.

The specification for the system will include a number of required operating and performance characteristics, such as:

1. The flexibility required to adjust the scope, configuration, and access mechanisms in each of the three levels as indicated by experience and future demand.

2. The operating methodology that will permit effective use of existing and anticipated future computer, communications, photographic technology, and

3. The ability to monitor performance of the system as a whole as well as the individual components.

In addition to the further specification of the system, governance, funding, and implementation are being considered.

For further information, please contact NCLIS, 1717 K Street, N.W., Washington, D.C. 20036. (202) 653-6252

8 November 1976

TASK FORCE MEMBERS

Name and Institution	Representing
Richard Boss, Librarian Princeton University Library	Large Research Libraries
Douglas W. Bryant, Director and University Librarian Harvard University Libraries	ARL/CRL Joint Committee on a National Periodicals Lending Library
Melvin Day, Deputy Director National Library of Medicine	National Library of Medicine
Leslie W. Dunlap, Dean Library Administration The University of Iowa	Large Research Libraries
Richard Farley, Director National Agricultural Library	National Agricultural Library
Eugene Garfield, President Institute for Scientific Information	Institute for Scientific Information
Warren H. Haas Vice President and Librarian Columbia University Library	Center for Research Libraries
Arthur T. Hamlin, Director Temple University Library	Association of Research Libraries
John A. Humphry, Director The New York State Library	Statewide Library Networks
Stephen A. McCarthy, Consultant Council on Library Resources	Council on Library Resources
Robert R. McClarren, Director North Suburban Library Systems	Public Library Systems
Russell Shank, Director Smithsonian Institution Library	Universal Serials and Book Exchange (USBE)
Joseph W. Price, Chief Serials Records Division Library of Congress	Library of Congress

Name and Institution	Representing
David C. Weber, Director Stanford University Librarian	Large Research Libraries
Alice Wilcox, Director MINITEX	MINITEX
James Wood, Director Bibliographic Support Division Chemical Abstracts Service	National Federation of Abstracting and Indexing Services
Andrew A. Aines Division of Science Information National Science Foundtion	Former NCLIS Commission member, January - July, now serving as a technical expert.

NCLIS Commission and Staff:

Joseph Becker, President
Becker and Hayes

Carlos A. Cuadra
System Development Corporation

Alphonse F. Trezza, Executive Director
National Commission on Libraries and
Information Science

Vernon E. Palmour, Director
Task Force

SPECIFIC RESPONSIBILITIES

THE NATIONAL LIBRARY OF MEDICINE

SHALL BE RESPONSIBLE FOR:

1. NETWORK MANAGEMENT AND CONTROL
2. NATIONAL COORDINATION OF PLANNING
3. BACK-UP RESOURCE FOR THE REGIONAL MEDICAL LIBRARIES
4. ACT AS A REGIONAL MEDICAL LIBRARY FOR THE MID-ATLANTIC STATES

THE REGIONAL MEDICAL LIBRARY

1. SHALL BE A BACK-UP FACILITY FOR THE RESOURCES LIBRARIES IN THE REGION.
2. SHALL BE RESPONSIBLE FOR THE PLANNING OF A COORDINATED SYSTEM WITHIN THE REGION FOR PROVISION OF LIBRARY SERVICES.
3. SHALL INDICATE HOW RESOURCES AND PROJECT GRANTS WHICH HAVE REGIONAL IMPLICATIONS FIT INTO THE REGIONAL PLAN. THIS INDICATION SHALL NOT INCLUDE A QUALITY JUDGMENT OF THE PROPOSAL WHICH IS THE PREROGATIVE OF THE RESOURCES REVIEW COMMITTEE AND THE BOARD OF REGENTS.

THE RESOURCE LIBRARY

A. REQUIREMENTS - - THE RESOURCE LIBRARY MUST HAVE THE CAPACITY TO OPERATE AS A MEANINGFUL NODE IN THE NETWORK.

B. RESPONSIBILITIES

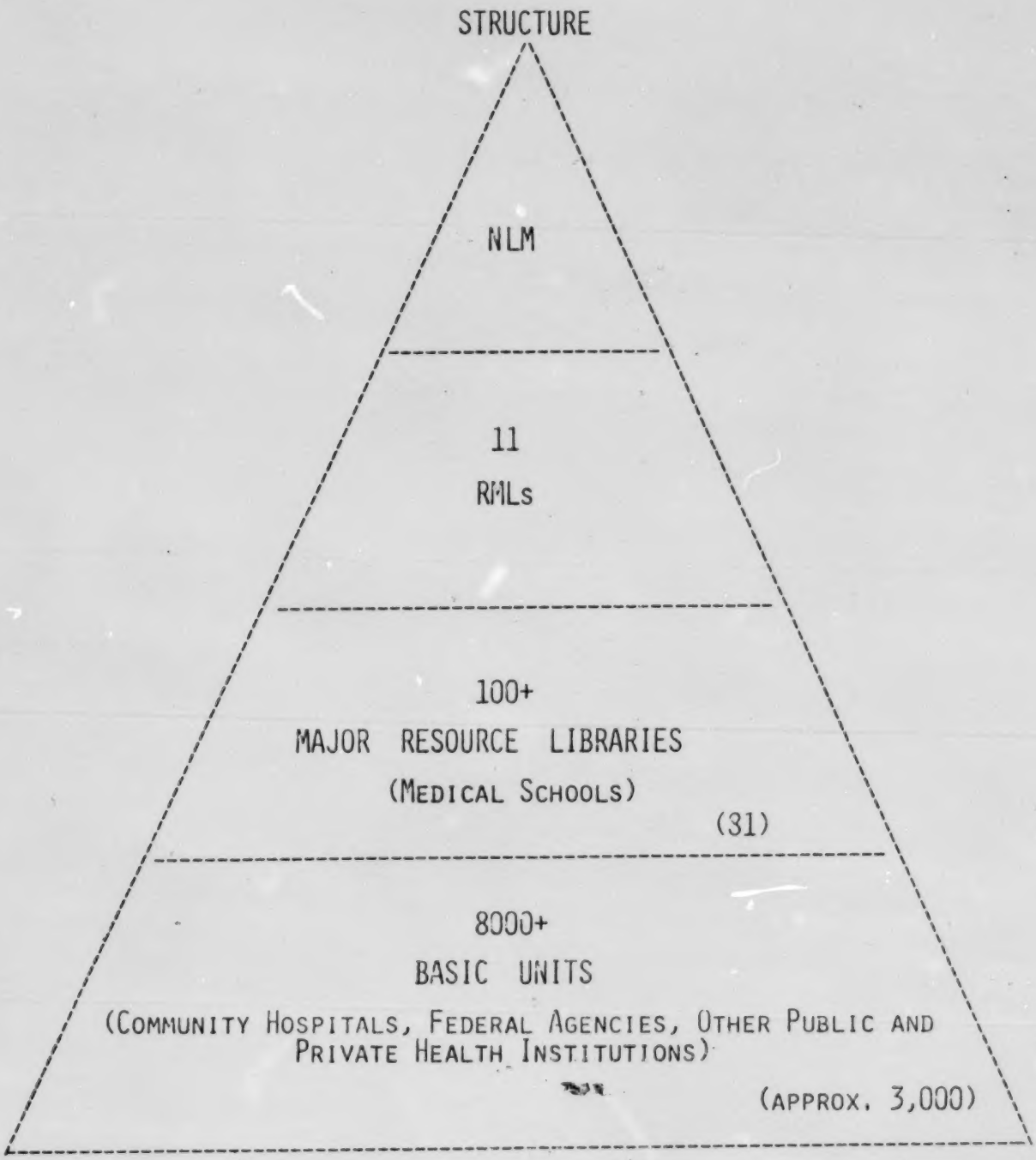
1. SUPPORT THE INFORMATION NEEDS OF THE BASIC UNITS LOCATED WITHIN ITS GEOGRAPHIC AREA
2. JOIN WITH OTHER RESOURCE LIBRARIES WITHIN THE REGION IN A COORDINATED EFFORT TO SUPPORT NETWORK DEVELOPMENT, INCLUDING COORDINATED REGIONAL ACQUISITIONS WITH RECOGNITION OF THE RML'S BACK-UP ROLE. SUCH A COORDINATED ACQUISITION PLAN COULD BE A BASIS OF REQUESTING ADDITIONAL NLM SUPPORT.
3. UNDERTAKE SUCH COORDINATED EDUCATIONAL ACTIVITIES FOR THE BASIC UNITS IN ITS GEOGRAPHIC AREA AS IT DEEMS NECESSARY FOR THE IMPLEMENTATION OF THE REGIONAL PLAN.

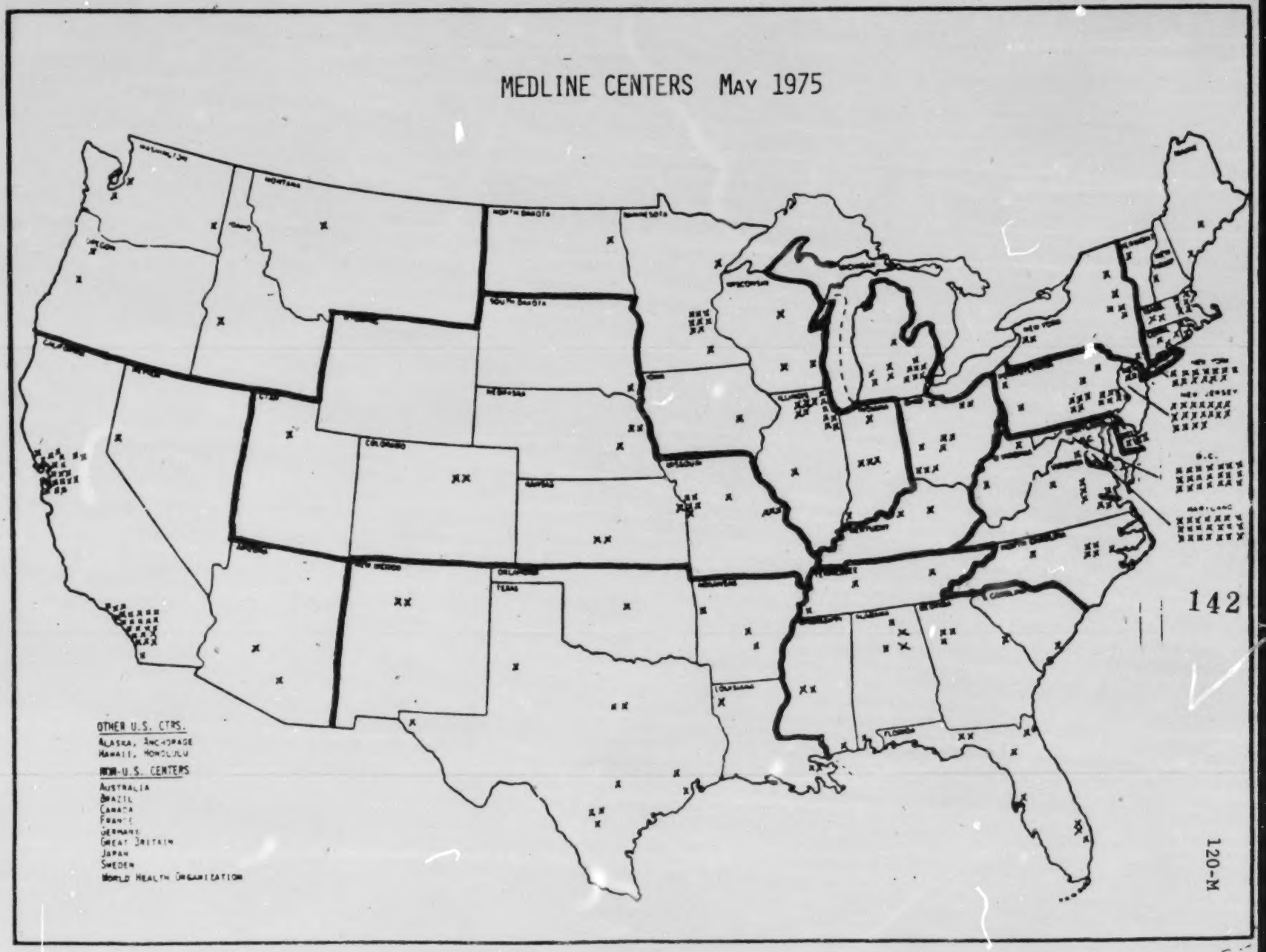
120-J

THE BASIC UNIT

SHALL INDICATE ITS WILLINGNESS TO UNDERWRITE THE CONTINUING COSTS OF ITS PARTICIPATION. THESE INCLUDE, BUT ARE NOT LIMITED TO, (A) ADEQUATE STAFF TO SUPERVISE AND MANAGE THE RESOURCES WITHIN THE BASIC UNIT, AND TO ASSURE EFFECTIVE COMMUNICATION WITH THE KESOURCE LIBRARY; (B) COMMUNICATION CHARGES BETWEEN BASIC UNIT AND RESOURCE LIBRARY.

A HIERARCHICAL NETWORK OF REGIONAL MEDICAL LIBRARIES




MEDLINE CENTERS May 1975
OTHER U.S. CTRS.
ALASKA, ANCHORAGE
HAWAII, HONOLULU
NON-U.S. CENTERS
AUSTRALIA
BRAZIL
CANADA
FRANCE
GERMANY
GREAT BRITAIN
JAPAN
SWEDEN
WORLD HEALTH ORGANIZATION

141

142

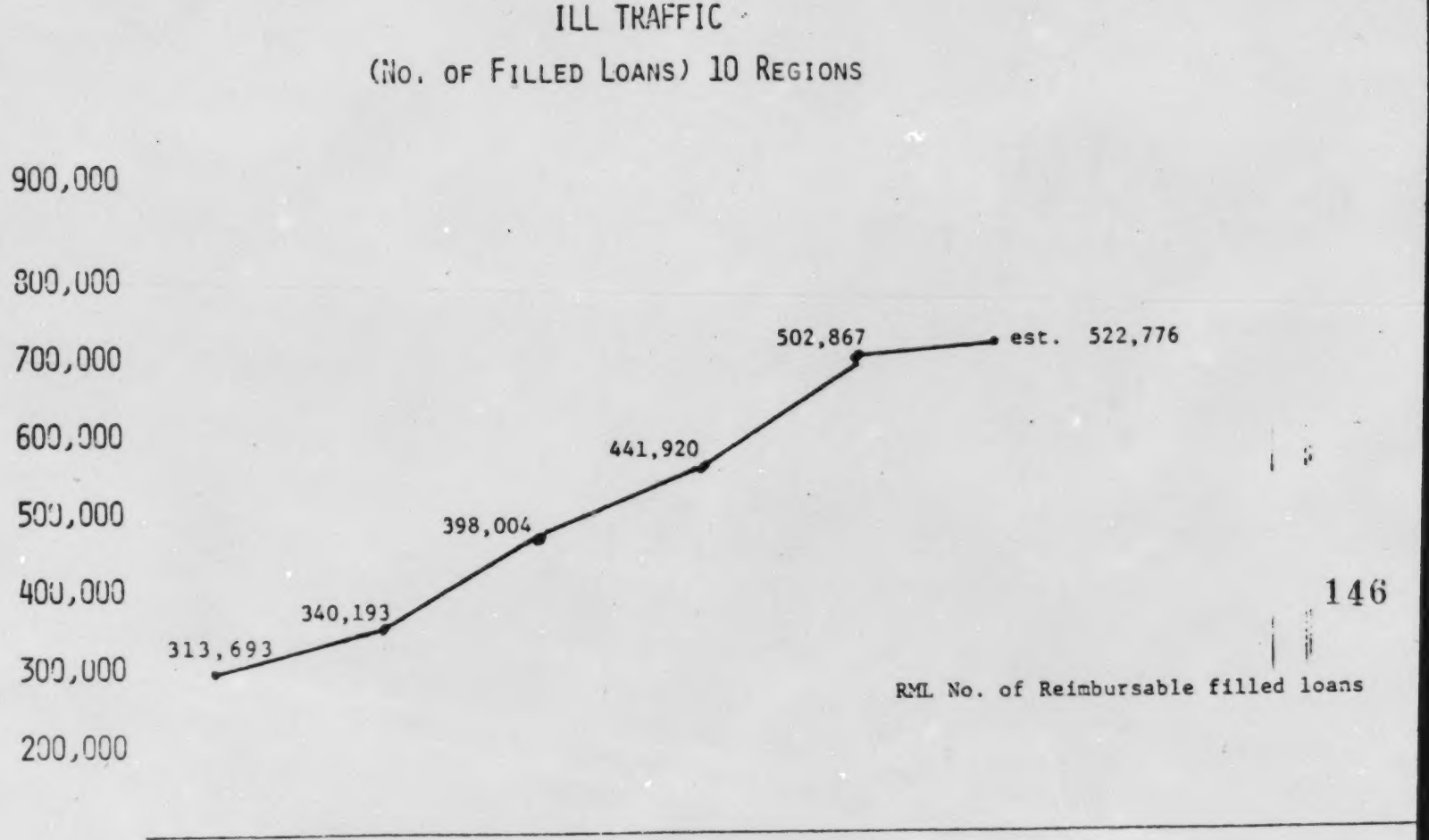
120-M

PRODUCTION STANDARDS

1. Of the ILL requests filled by the library, a minimum of 85% will be filled by the fourth calendar day after receipt; 100% will be filled by the tenth calendar day after receipt.

2. Of the ILL requests that cannot be filled, a minimum of 85% will be cleared from the library by the seventh calendar day after receipt; 100% will be cleared from the library by the fourteenth calendar day after receipt.

120-N


ILL TRAFFIC
(No. OF FILLED LOANS) 10 REGIONS
900,000
800,000
700,000
600,000
500,000
400,000
300,000
200,000
313,693
340,193
398,004
441,920
502,867
est. 522,776
FY
71
72
73
74
75
76
RML No. of Reimbursable filled loans

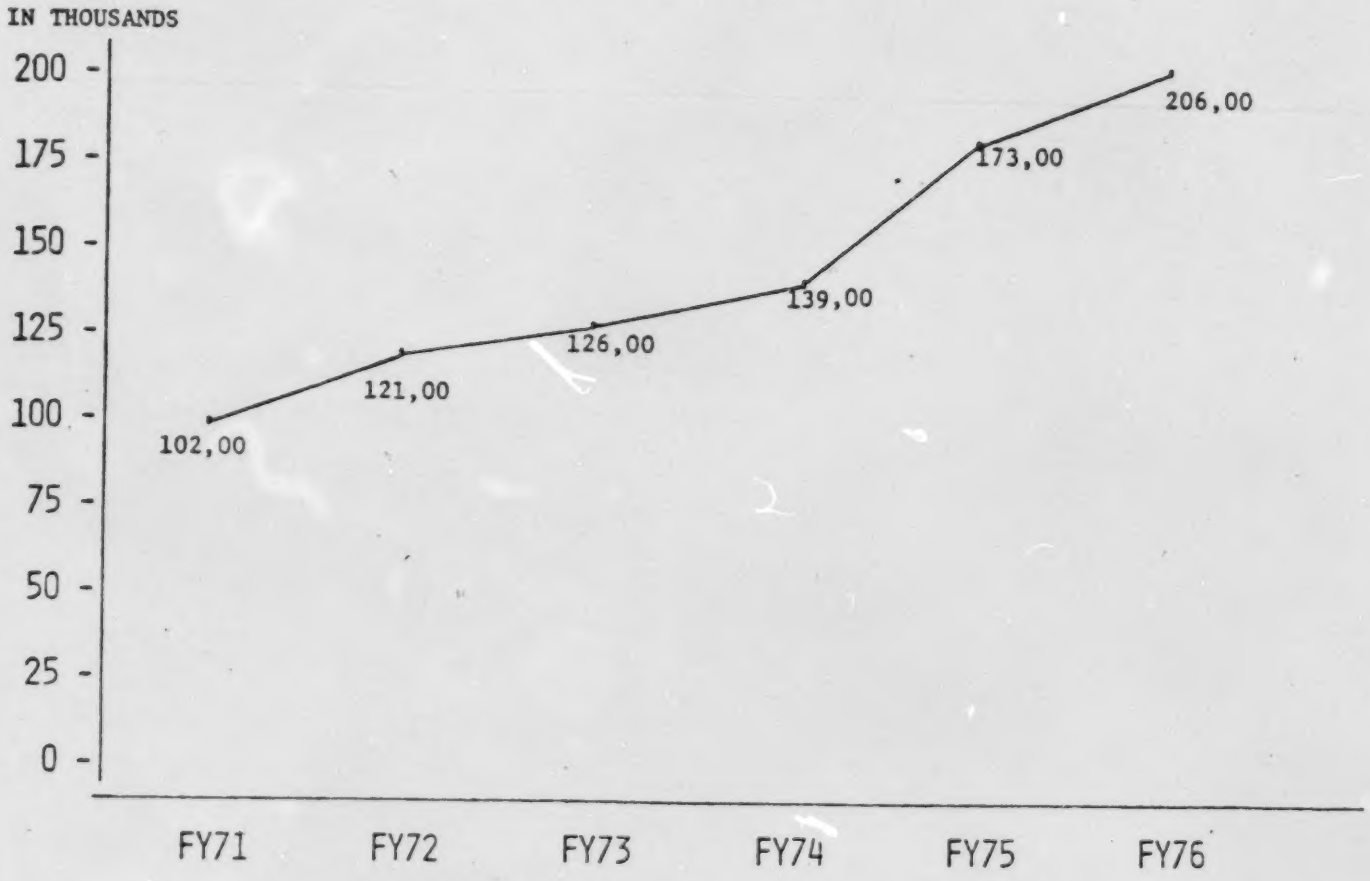
145

146

120-9

REQUESTS FILLED

BLM



120-P

RML NETWORK FY 1976
DOCUMENT DELIVERY PERFORMANCE

REGION	REQUESTS FILLED	% FILLED 4 DAYS	% FILLED 10 DAYS
1*	56,606	88%	100%
2	84,337	96	100
3	51,065	94	99
4	65,113	81	100
5	25,800	92	100
6	50,906	98	100
7	56,921	84	97
8	29,314	95	99
9	70,849	97	100
10	26,873	53**	80**
11	48,627	75***	96

566,411 TOTAL FILLED REQUESTS
88% FILLED IN 4 DAYS
98% FILLED IN 10 DAYS

* ESTIMATES FROM 3 QUARTERS DATA
** 4TH QUARTER DATA IS 93% FOR 4 DAYS, 99% FOR 10 DAYS
*** 4TH QUARTER DATA IS 84% FOR 4 DAYS

NLM ILL ACTIVITY

FY 1976

	Received	Accepted	Filled
REGION IV RML	83,000 (32%)	78,000	65,100
NATIONAL	180,000 (68%)	167,000	141,000
TOTALS	263,000 (100%)	245,000	206,100 (84+%)

120-R

COST ELEMENTS FOR INTERLIBRARY LOAN

LABOR (SALARY & FRINGE)

- RECEIVING REQUESTS
- CODING, SORTING, ALPHABETIZING
- PULLING, CHECKING
- PHOTOCOPY

SENDING, REFERRING, NOTIFYING

RESHELVING

ADMINISTRATION, SUPERVISION (INCLUDING STATISTICS)

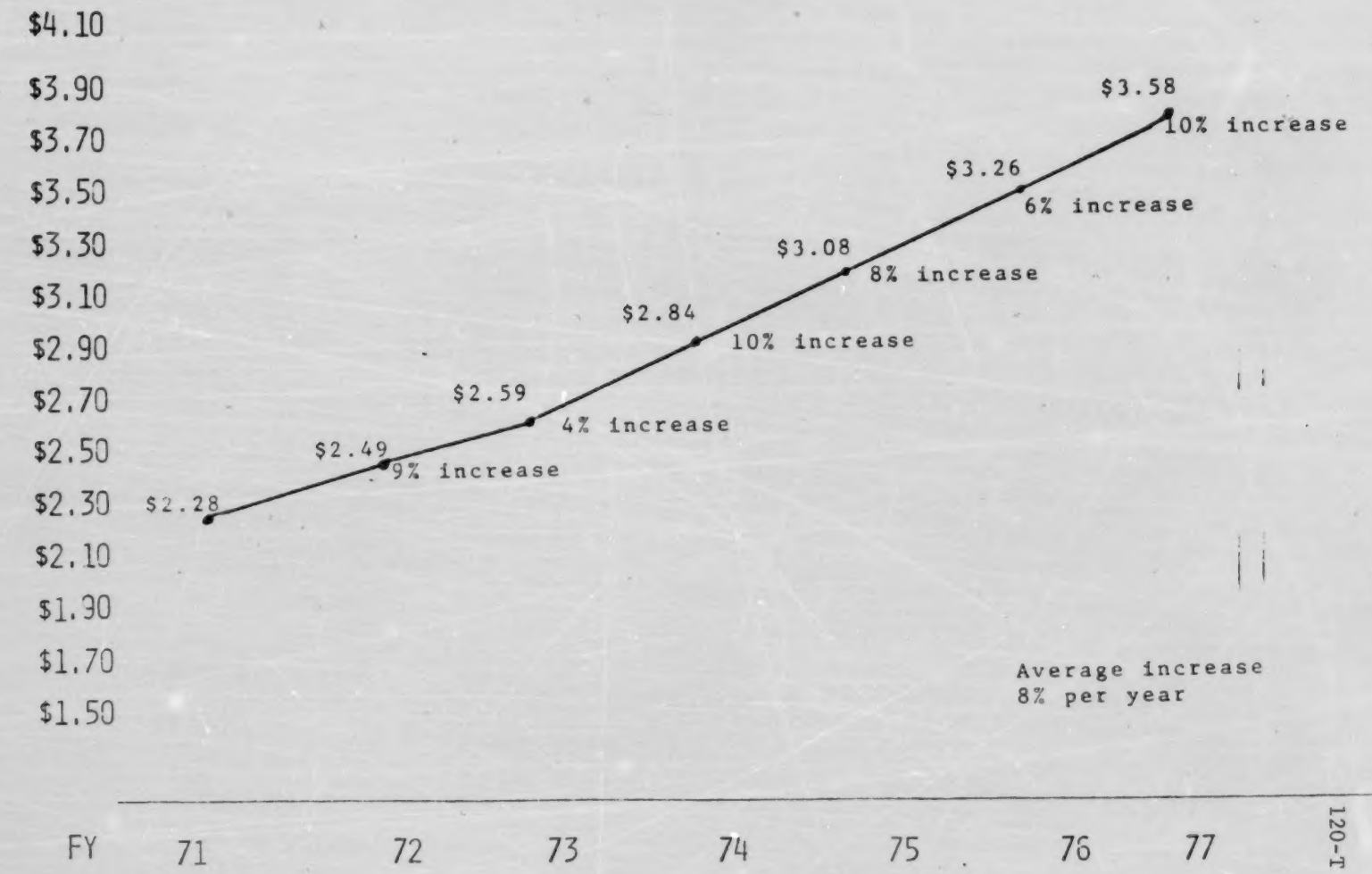
POSTAGE

SUPPLIES

COMMUNICATIONS - TWX

DATA PROCESSING (EQUIPMENT, TIME)

PHOTOCOPY


$4.10
$3.90
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$2.28
$2.49
9% increase
$2.59
4% increase
$2.84
10% increase
$3.08
8% increase
$3.26
6% increase
$3.58
10% increase
Average increase
8% per year
FY
71
72
73
74
75
76
77

120-T

153

154

PHOTOCOPIES

Cost Item	Regional Grant Supported Service
Verifying	$0.150
Paging	.121
Record keeping	.052
Packaging & mailing	.039
Reshelving	.036
Copying	.204
Subtotal	.602
TWX transmission	.030
Referral routing	.004
Opening mail	.002
Coffee breaks	.048
Personal (calculated at 3%)	(.026)
Other	.020
Direct Labor Total	.732
Machine rental, paper, toner	.244
Postage	.095
Envelopes, labels	.023
TWX rental	.037
Materials total	.399
Direct Labor & Materials	1.131
Fringe Benefits (10% S&W)	.073
Overhead (45% S&W)	.330
Total, per request received	1.534
Total, per request filled	1.763
Total, per request filled, adjusted for 2 wage increases, as of July '70*	2.070

*Journal of the American Society for Information Science
May-June 1971. Carol C. Spencer

MEDLINE*
FY '76
ALL REGIONS

RANK BY SEARCHES		# SEARCHES	# CONNECT HOURS
1	RML IV	77,090	11,931
2	RML XI	48,867	7,220
3	RML VII	39,878	6,684
4	RML VI	32,237	3,078
5	RML VIII	29,701	3,959
6	RML IX	29,473	3,822
7	RML V	28,700	4,098
8	RML II	25,764	3,996
9	RML I	19,172	3,320
10	RML X	16,931	2,080
11	RML III	13,098	2,318
	TOTALS	360,911	52,513

*INCLUDES MEDLINE AND RELATED FILES

120-V

120-3

NATIONAL COMMISSION OF NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS

NINTH MEETING

VOLUME TWO

TRANSCRIPT OF PROCEEDINGS

Place: Arlington, Virginia

Date: October 22, 1976

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NATIONAL COMMISSION ON
NEW TECHNOLOGICAL USES
OF
COPYRIGHTED WORKS

- - - - - - - - - -

NINTH MEETING

Room 910
Crystal Mall Building No. 2
Arlington, Virginia

FRIDAY, October 22, 1976

BEFORE: The National Commission on New Technological Uses of Copyrighted Works

STANLEY H. FULD, CHAIRMAN
Retired Chief Judge,
New York Court of Appeals

Special Counsel: Kaye, Scholer, Fierman, Rays and Handler

MEMBERS OF THE COMMISSION:

(As hereinbefore listed)

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JUDGE FULD: May I call to order the meeting for today.

Welcome, Mr. Gordon Williams.

Mr. Williams is the Director of the Center for Research Libraries in Chicago, which is a cooperative Center for the collection of little-used research material.

The Center has an extensive collection of journal literature, and lends only actual materials, not photocopies.

It also has an affiliation with the British Library Lending Division, which supplies photocopies of material which the Center cannot obtain in this Country.

Mr. Williams will discuss the Center's activities.

The lending and photocopying activities of the Center for Research Libraries, including the arrangement of securing photocopies of periodical articles from the British Library Lending Division in Boston Spa

By

GORDON WILLIAMS, DIRECTOR
CENTER FOR RESEARCH LIBRARIES
IN CHICAGO

MR. WILLIAMS: Thank you, Judge Fuld.

The Center for Research Libraries was founded, in 1949, by ten major universities as a not-for-profit corporation.

It was founded out of recognition of a factor that needs emphasis -- and, I think, re-emphasis -- in the context of interlibrary borrowing and photocopying, especially

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as this latter is subject to increasing cost because of royalty payments to publishers.

This factor is simply that no library supported to serve some limited clientele -- a college, or university campus, a government, or an industrial research establishment, a city, or a county--can possibly afford to buy, process, keep forever on its shelves all of the government publications -- the books, periodicals,/documents, and so forth,- that its patrons sometimes need to consult.

Interlibrary borrowing and photocopying -- as this latter became easier, faster, and cheaper -- was never begun, nor are they now continued, in order to save the library's money at the expense of the publisher--as many of them seem to think and, indeed, as the language of the present law seems to imply.

It was begun and is continued because, in the first place, the individual personal user cannot afford to buy and house, for his own exclusive use, all of the publications he finds it useful or necessary to consult from time to time;

and in the second place, because neither can his local library afford to buy, and keep forever, all of the publications that its patrons need now and will need in the future.

The library's purpose in such interlibrary borrowing or photocopying is not to save money, but rather, it is to

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make whatever funds it can afford, provide access to as much published literature as possible.

The Center for Research Libraries was founded to help achieve this purpose by making such access to materials the libraries could not otherwise afford, as convenient and as efficient as possible and, therefore, more extensive than it would otherwise be.

The result is, in no case, a reduction of the number of titles acquired and available but, in fact, an increase.

And -- not incidentally -- this is what I understand to be the basic reason for authorization in the Constitution of the monopoly of a copyright for a limited period of time: namely, to increase the publication and, hence, the availability of useful knowledge and, therefore, this is the measure against which the effectiveness of specific copyrights, I assume, should be judged.

The Center for Research Libraries' first program for improving access to periodicals is apropos as an example of this approach. Under this program, and with initial help from the National Science Foundation, the Center began to acquire for the joint use of its members those periodicals important enough to be abstracted in Chemical Abstracts and Biological Abstracts that were not held by any member library. There were a surprising number of these, approximately 3,600 periodicals in fact.

I know of no case in which a library has reduced its expenditures for books or periodicals because somewhere available to it, on interlibrary loan or through the

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availability of a photocopy of an article from a journal. Any such reduction has been solely because the library budget has been cut by those who provide it.

What some may have done, because of such availability, is to change, somewhat, the selection of what they bought. That is, they might have bought Title A rather than Title B, because it is more useful for their money--but Title A is still bought and placed in the system and is still accessible, and it might not be, otherwise, at all.

Let me quote some statistics in illustration.

You have already heard Gene Palmour and others cite the figure of 50,000 or so journals of research significance as currently being published. In comparison with this, the best comparable figures I have been able to get indicate that the average major university research library is currently receiving only 14 to 15 thousand titles out of this 50,000, and that this many is now consuming 50% or more of the current acquisitions budget of these libraries.

The average number in a college library appears to be in the range of 300 to 500 titles, only, out of the universe of some 50,000; and is even less in most public libraries and in government and industrial research libraries.

It is clear that, unless there is some alternative access available which is more economical than local purchase and perpetual housing by every library, there cannot be the full access to information that is in the Nation's research and

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educational interest.

The basic purpose of the Center for Research Libraries -- as of the British Library Lending Division -- and of other networking arrangements, is simply to try to assure scholars and researchers--through their libraries--of ready access of materials which the library would never, in any case, be able to afford to acquire for itself.

It seems to me that the thing to be done -- and which I am confident this Commission is concerned with doing is to assure, within the framework of a copyright monopoly and with new technologies, the cost of access to some publications does not become so great that it is restrictive and limiting either to access, or publication.

I would like to be more specific about a particular aspect of this. You have already heard, I am sure, something about the frequency of use of many publications, or, more to the point, about the infrequency of use. Let me emphasize here that infrequent use is not a synonym for "unimportant"! Many factors other than importance make a given title -- be it a book, or periodical article of "infrequent use".

One obvious factor is language. Not many scholars or researchers in the United States are familiar with Japanese, Hungarian, or other exotic languages; and articles in these languages, however important, are not going to be frequently used, simply because few people can read them.

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Yet many of these are important and should be available when needed; and they are needed, occasionally.

Another reason is specialization.

Science and technology, in particular, are notable for increasing specialization--which means few readers in any one specialty.

Several publishers, and I think specifically of the American Chemical Society and the American Psychological Association, have done surveys to discover the number of readers of the articles in their publications. The American Psychological Association found that the average number of readers was only 7 per article in their publications, and the American Chemical Society found the average to be only 10 persons for articles in their publications.

Moreover -- and this is important in the case of a university library, especially -- scholars move from one institution to another, taking their special interests and their special informational needs with them, but not their library's books and journals that have been acquired for their use. These then languish unread there, but the subscriptions are continued to avoid a gap in the file for the next specialist in that field, who may not be appointed for years, or ever. In the meantime, the maintenance of that now unused file precludes the library from providing adequate files for the specialist in a new field who was appointed in the place of the one who left.

These factors are exaggerated and have unique and peculiar effects in journals, especially.

Not many people use journals except, perhaps, for a few current general ones such as science or nature.

What they use are articles in journals.

But the peculiar thing about periodicals is that you cannot subscribe to articles, but only to the whole miscellaneous collection of articles that constitute the periodical. In addition, you must subscribe and pay in advance without knowing what the articles will be about or who their authors will be. In effect, subscribers are being required to buy ten or twenty articles they are not interested in to get one that they are.

The journals that are most frequently used in interlibrary borrowing or photocopying, are also the ones that appear to be the most widely subscribed to, already, by libraries. There is a consequent danger, it seems to me, that these journals also will be the ones that take more of the library's money, in any royalty-for-photocopying arrangement.

But, since the library's funds are finite and are annually fixed, this additional cost must come through the counterbalance of reduction elsewhere. This is likely to be at the expense of subscriptions to the least frequently used journals -- though as I have emphasized; not, necessarily, the least important ones.

But since these journals are very infrequently used, any loss in subscription will not be offset by photocopy royalties, and they will be in even greater financial trouble for their continuation.

The real competition here is not between libraries and publishers but between publishers, for the library's dollars; and the risk to be guarded against is that any imposed system does not simply give more of the limited

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funds to those journals that are already financially profitable, at the expense of those that are not, but that it is important to keep published.

The Center for Research Libraries is now providing access to some journals for its members from the British Library Lending Division. We have just looked at a sample of this use in a way that has never, to my knowledge, been looked at before, although I did hear yesterday -- as you did -- that Don King is beginning to look at some of his data in the same way.

Most journal-use samples look at a sample of all requests for journal articles, during a relatively short period of time. They are, in essence, "samples" of requests.

We looked at a sample of all use, by all borrowing libraries over a 12-month period, of a random sample of specific journal titles. The result is interesting, especially in light of the CONTU guidelines for Section 108(g)(2) of the new Copyright Bill.

For example, we found that only about 2% of the journals were requested six or more times by any one library during the year -- only about 2%!

If this sample is characteristic, this means that only about 1,000 titles out of the 50,000 or so titles currently published, are used as frequently as six or more

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times per year, by any one library.

Further -- and although I have not yet checked specifically for these titles in this sample -- I have checked what I think are similar situations in other cases, and those libraries making these frequent requests -- that is, making six or more requests -- most usually had their own subscriptions to these journals.

Curiously enough, in one of those cases, the library had subscribed to the journal for three years, had paid the publisher annually the subscription fee for that journal but, in each of those years, it had not received a single issue from the publisher! He was now borrowing from another library, issues that he had paid for from the publisher, but never received!

JUDGE FULD: He got his money back, though!

MR. Williams; That is one of the faults of the library system. It should have been claiming that earlier, as well. But it is a complex matter in the library, obviously.

We have also found that multiple use by a library -- that is, requests for photocopy, by a library, of more than one article from a particular journal -- is most frequently the result of only one patron's request for several articles from that journal. It is not several patrons wanting several issues, on different occasions.

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Most of these requests appear to be for a one-time use. You will get two or three requests from a library. You look more closely. These are for one patron, and that is the only request that the library makes during the year.

This point raises, perhaps, some conflict between the guidelines for Section 108(g)(2) and Section 108(d) which, apparently, makes a distinction between borrowings for individual users, and library borrowing.

In this general connection, I would like to comment about the expressed fear of the effect on journal subscriptions of a centralized journals library or other organized, interlibrary loan arrangements. The new copyright act and its guidelines appear to regard disorganized and inefficient methods of access as o.k., but organized and efficient methods of assuring access as evil.

The fear presumably is that the organized and efficient ones will make it easier for libraries not to subscribe to journals the publishers would like to have them subscribe to. But I return to my basic point: Under no conceivable economic circumstance can libraries afford to buy or subscribe to all of the books and periodicals their readers need, or want, and should have access to. They must borrow, or photocopy, from elsewhere, if access to these is to be provided.

The more inefficient that limited proprietary interests force this access to be, the more costly it will be, and

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the less money there will be available to support publication of those publications most in need of such support--if they are to continue.

In this connection, I think it is fairly obvious that it is really in everyone's interest to try to support the most efficient and economical system.

Let me also point out that most studies of journal use via interlibrary borrowing or photocopying indicate that only about 25% of such use is for non-English language materials. Yet, about 50% of research library journal collections are in foreign languages. (In the case of the Center for Research Libraries, about 50% of the requests to us, are for foreign language materials, but I suspect that this is because our users of this journal source at this time, are primarily major universities, not colleges, or public or special libraries.)

Given other evidence as well, for the relatively infrequent use of most foreign language materials, the suggestion is that this would be a most fruitful area for shared use through an efficient, central lending operation, or other organized interlibrary loan .

Yet this is equally suspect.

I certainly do not mean to suggest that the United States should not be equally concerned and careful about the copyrights of other Nations. But I do suggest that

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their books and journals in their own languages are not significantly dependent upon sale to U.S. libraries, and that efficient access to these will help, not hurt, U.S. publications and access to information generally.

MR. NIMMER: May I get a clarification on that?

MR. WILLIAMS: Surely.

MR. NIMMER: Are you suggesting that whatever copyright arrangements may exist with respect to domestic publishers, those would be inappropriate with respect to foreign publishers?

MR. WILLIAMS: No. What I am, rather, suggesting is that the blanket kind of barrier to interlibrary arrangements might be modified to some extent with respect to the foreign ones.

MR. NIMMER: A given number, or something of that sort?

MR. WILLIAMS: Yes. The guidelines might well be different in the two cases.

MR. LACY: Of course, the United States is required by Treaty to treat the copyrighted works of foreign Countries identically with those of Nationals.

MR. WILLIAMS: That is right. Indeed they are. But, on the other hand, the CONTU guidelines and the law itself -- which is going to require interpretation, I would gather -- has to do in some cases with the nature of cooperative,

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systematic arrangements for these things, rather than the actual photocopying that is involved; and it is this point to which my remarks are addressed.

MR. LACY: The point is: The Treaty provides for business to treat the copyrighted works--where the copyright is vested in the national of any other Member of the Universal Copyright Convention--in no way differently from the copyrighted work which is vested in the United States.

MR. WILLIAMS: Finally, I would like to comment, briefly, on the concern expressed yesterday afternoon about coin-operated, user-operated photocopying machines in libraries, particularly.

The impression I got from the discussion was that this was a thing that should be stopped or slowed down, or taxed for copyright royalties in some way.

In my own observation, use of these machines, and indeed in my own use, use in lieu of any possible purchase is so rare as to be absolutely insignificant! They are primarily used in lieu of more time consuming, and inefficient note-taking by hand. I would suppose that most of you would agree that, indeed, this is most of your own personal use in the use of photocopying machines for copyrighted materials -- note taking.

This kind of use -- in lieu of note-taking -- I take to be fair use. But if the operation of these

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machines is to be stopped or hindered, I am confident that virtually no more book or journal sales would result. Or, if taxed for what is fair use (and without a monitor/to there oversee each operation and forgive each fair use, this would be the result of a blanket charge) either this is unfair to the user, or it will inhibit his use, and waste his time and effort in the legitimate development and use of new technology.

I don't have anything else to say. I will be glad to try to answer any questions.

JUDGE FULD: Dr. Dix?

DR. DIX: I don't think I heard exactly what Gordon Williams heard yesterday afternoon, in our discussion. In other words, I did not think our emphasis, Gordon, was on coin operated machines so much as the kind of systematic use of photocopying device for distribution within large corporations, of multiple copies, and so forth, clearly in lieu of purchase.

Aside from that, Mr. Chairman, I just want to say that I think this is the clearest statement we have had of the library issue, as I see it, at least in terms of the systematic -- if you will -- an organized mechanism for the distribution of journal literature.

I hope that we will press Mr. Williams hard to get him to extend his thoughts on a variety of things.

The one thing that I would like to ask, is:

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As you look ahead -- you have had more experience, I believe, than anyone else in this Country with this kind of library's library -- as you look ahead ten, fifteen years, what do you see as possibly emerging-- that we have not yet thought about, Gordon, in the way of systems of this sort?

In other words, which direction are we likely to be going?

MR. WILLIAMS: I suspect that we are likely to be going more in the direction of centralized retention and access for materials, among other reasons, because age is beginning to catch up with us. Books and publications are accumulating. A new one does not automatically supersede an old one, and you have got to keep both. Under this system, libraries have been growing and, in fact are growing, exponentially in size. Yet there is some decay of use, by age, and it is clear that it is not possible to have every library continuing to grow like an inverted pyramid, starting with a few volumes and going on forever getting larger and larger and larger--keeping everything that it ever acquired. And, yet, a few copies -- at least one, and perhaps more of a few of them -- need to be available for scholarly use.

Given what is in general the infrequent use of these materials, I would suppose that there will be more

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systematic/centralized arrangements for the collection and preservation of these materials as time goes on. Much of this will be older material, but not all of it.

One of the surprising things that happens as time goes on, is to find a number of publications that were not regarded as having "scholarly interest" at the time they were published; but that acquire this with the passage of time.

One can think of materials that are called "popular" (as opposed to scholarly): sports journals; journals relating to hobbies such as motercycles, automobiles, photography, high fidelity phonography. this kind of thing -- that are important aspects of social history. In general these are not now collected by libraries. A few public libraries may subscribe to them, but they do not retain them for more than 3 or 4 years, because they are not seen at that moment as having scholarly value. Yet, as time goes on, they do become important and they are not, then, generally available. Sometimes there are no copies that can be found of these things!

The way to assure their future access is to assure their current systematic collection. for permanent retention by a library that will assure them future access to scholars everywhere in the country.

MR. NIMMER: Mr. Williams, you gave a clear and forceful statement as to the inability of libraries to simply obtain copies by subscription. But I am not clear -- maybe I missed it -- on your position with respect to, given the necessity of photocopying, whether libraries, in your opinion, can live with some form of copyright system, royalty

payments, etc., and, if so, what the shape of that system may be.

Do you see the guidelines as acceptable, or unacceptable, or do you see any alternatives?

MR. WILLIAMS: Well, speaking personally, it seems to me that the present CONTU guidelines make a very good stab -- I think as good, probably, as one could expect at this moment -- toward something that is acceptable to the libraries.

I think guidelines need to continue to be examined -- as I think will, in fact, happen.

I am not at all implying that I think all use should be free use, and the right of the copyright proprietor and the author is to be completely ignored in this.

What I do urge, however -- based on the use of these materials -- is that guidelines and royalties not take the form of becoming so restrictive that they restrict access because of the inability of libraries and individuals to buy everything they need.

MR. NIMMER: Then I guess the question is: How restrictive is too restrictive?

MR. WILLIAMS: Well, I am going to give you a librarian's answer to that one.

Too restrictive is so restrictive that it prohibits access to anything reasonably needed for research, education, or

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legitimate personal interest.

MR. NIMMER: That seems more like a lawyer's answer!

(Laughter)

MR. LEVINE: It seems there are two methods of restriction:

One is that there not be permission from the publisher to reprint.

The second: that the royalty costs are so high that there is an economic restriction.

Assuming that there was some form of -- dirty word -- "compulsory" licensing, where the end costs of obtaining the photocopy of the journal article are passed on to the requester, this would not in any way, I think, interfere with the budget of the library.

Would that restrict the availability?

MR. WILLIAMS: Would it restrict it if this cost were passed on to the user, instead of being paid by the library?

MR. LEVINE: Presumably, now, it is also done, I would imagine. Is that not the case?

MR. WILLIAMS: The practice varies; so it is not consistent. Some libraries do pass this cost to the user and some do not.

DR. DIX: May I give a somewhat different answer to Mr. Nimmer's query, at the moment, as a librarian.

I think I would almost be willing to predict that

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for the foreseeable next couple of decades, the library -- the money available to individual libraries for journals -- the acquisition and distribution of journal literature -- is going to be pretty nearly fixed. Many libraries are already over-extended on that side, as we learned already -- and have cut too far on their purchase of monographs.

If there is going to be no more money, then any additional imposition of costs, in the form of royalties or whatever, is going to result in some reduction in the holdings of individual libraries, I think, as a result of this.

So I think those are the factors on the scales, perhaps, when we say, "How much is too much?"

And, again, that is an unanswerable question, in a way, but I would suspect somthing like that is likely to happen.

MR. LACY: The discussion several times referred to copyright as "restrictive", or, apparently, as intending to enforce subscription instead of copying; or imposing significant managerial burdens.

I think there is a point of view among some who would argue for, so to speak, a pro-copyright side; and particularly if we move toward a much more extensive system of reliance on a central national service for copying.

It is not intended in this sense, at all!

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If one views it as desirable that the users of a work in a reprographic form should have the same opportunity and obligation of making a contribution to the cost of having edited it, putting it into reproducible form, and disseminating it, as those who use it, instead, in a printed form -- which is basically the point in copyright -- you are not talking about restriction at all.

I don't know of any publisher who has proposed that people should not be allowed to photocopy.

I take that back. I don't know of any organized group, or a responsible spokesman for the industry as a whole!

(Laughter)

On the contrary, I personally think that the public interest may well be served by a substantial extension of reliance on reprography by access to individual material. But in point of fact, if there is to be a substantial increase in reprography -- if this comes to be not a marginal use of rare material -- it becomes really an important factor in dissemination of materials -- then, all the more, it becomes important, not as a restrictive measure, but as a measure to make it possible that users in that format share in the total cost of the original material.

So I would hope the librarians do not think of copyright, or the requirements for payment, particularly if

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we are talking in terms of an ultimate national as well as central system, as we discussed yesterday, as a restrictive or hostile measure but, rather, as a possibility of making a national system like that work, as a means of channeling user contributions to the necessary functions for dissemination.

I don't think there is a conflict of interest on this point.

JUDGE FULD: Any other questions?

MR. FRASE: Mr. Williams, what is your BLLD volume now for your members, annually?

MR. WILLIAMS: Currently, it is about 25,000 photocopies per year.

MR. FRASE: Is this growing at some rate?

MR. WILLIAMS: Yes, it is.

MR. FRASE: Such as what, annually? Or have you been operating long enough to estimate?

MR. WILLIAMS: We have been operating this program for only a year, and it is growing, I think, faster now than it was initially. It is accelerating until it reaches a kind of leveling off point. We expect that it might run, by the end of the year, to the point of being about 50% more than at present -- some place in the neighborhood of 35 or 40 thousand.

MR. FRASE: What is the method used in getting the material back?

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Is it mailed directly to one of your member libraries?

MR. WILLIAMS: Yes.

MR. FRASE: Rather than channeling back?

MR. WILLIAMS: Yes. That is right. The Center is just a link in here to make the transmission of this request, and the accounting, simpler.

MR. FRASE: What kind of service do you get?

MR. WILLIAMS: In terms of turn-around time, do you mean?

MR. FRASE: That is right.

MR. WILLIAMS: The members mostly teletype their requests to the Center. A few telephone them. We put them on a computer link that gets them through to the British Library Lending Division the next morning--given the time differential between the U.S. and Great Britain. The British Library Lending Division then gets them off the computer early in the next morning, and fills them by normal procedures; airmails the photocopy directly back to the requesting library. The total turn-around time is, rather surprisingly, variable. In some cases it can be as short as three days from the time the library makes its request until it receives the photocopies. In other cases, it will run out to ten days or so.

MR. FRASE: Is this, mostly, variations in the Postal Service?

MR. WILLIAMS: Partially that; Partly, there are variations in BLLD response.

MR. FRASE: Shifting to another question, is the kind of certification to be made by the borrowing library, under the guidelines, going to raise any problems for you, or is it going to be a pretty straight-forward matter?

MR. WILLIAMS: I do not anticipate, at this moment, that it is going to raise any really severe problems, no. It is going to involve some more record keeping, certainly.

MR. FRASE: Am I right in believing that, so far as your own collections are concerned, you don't do a great deal of photocopying?

MR. WILLIAMS: Yes. We do virtually none for member libraries. Almost the only photocopying that we do -- and I am talking now, when I say "photocopying", about copyright materials, not the kind of photocopying that we do for preservation of older materials.

MR. FRASE: Right.

MR. WILLIAMS: Almost the only photocopying of copyright materials that we do, is to supply some foreign libraries-- the Japanese, for example, -- with journal copies from our collection. This is a very small amount.

MR. FRASE: Could you make available to the

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Commission, and also to Mr. King -- or we could do that -- a small statistical study on a sample basis?

MR. WILLIAMS: I will be glad to.

MR. FRASE: Thank you very much.

MR. LACY: Mr. Chairman, I have one other brief point -- just an observation.

Reference has been made, from time to time, to the fixed level of library appropriations, and the burden of the royalty from photocopies imposed on it.

To be realistic, I think we ought to recognize that any terms that have ever been discussed about this royalty on photocopying would be a trivial charge, as compared to the increases in postage rates on mailing material out, or the cost of film or paper used in the Xerographic processes, or the increases in cost of fuel oil in the libraries, and would be infinitessimal compared to library salaries of the last decade. It really is not an important issue.

JUDGE FULD: Sure. I understand.

MR. LACY: We are all deluding ourselves and, really, raising a false issue if we are saying that this is such a burden in our acquisition policy.

Also, appropriations are not fixed. Librarians get raises in salaries--over a period of time. When costs go up, funds are found to meet them, over a period of time.

DR. DIX: May I respond, Mr. Chairman, by simply

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saying that I want to be sure the record indicates that there is, though, a certain flexibility here, and that I agree with Dan: that I assume that the kind of royalty arrangements we are talking about would not add a great deal to this total cost. I just would like to be sure that they don't, whatever they are; that the amounts are, somehow, of such a nature that they won't upset this.

MR. LACY: It is the increase in the cost of hard type performance in serials that results in increasing production costs against inflexible circulation.

MR. HERSEY: Mr. Williams, has the Center been considering, for the future, any new technological means of answering your request that might substitute for the Postal System?

Have you been considering tele-reproduction, and that kind of thing, yet?

MR. WILLIAMS: Only in the most general way. There has been some investigation of this by other libraries -- not by the Center, specifically.

The problem with most of these--from the library's point of view--is that their cost is very substantially greater than the gain in time that they provide. So far, at least, it has not seemed -- for most scholarly use -- that the gain in time is worth the addition in cost.

The Center, in its own operations, increasingly

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uses United Parcel Service rather than the United States Post Office for the delivery of original books, because of its faster service and, in some cases, even cheaper service. But the matter of speed of access is one in which there is some uncertainty. The need to have the material within a matter of an hour or two appears rarely to be the case in most scientific, scholarly, educational use. It is important to have it within a few days, rather than within a few weeks, and it is, I think, also particularly important for the user to be assured that, in fact, he is going to get it, that it is coming within a reasonable time without uncertainty or long delays in having to hunt for it, which are real barriers to effective work.

MR. LEVINE: Under the CONTU guidelines, the obligation of certification is on the requesting library, as I am sure you know.

Are you fairly certain, in your own mind, that you are not a requesting library when a request comes to you and you then make a further request to BLLD?

I take it you consider yourself in that situation to be acting merely as an agent for the requesting library.

MR. WILLIAMS: Correct.

MR. LEVINE: Because I would think that would put some severe restrictions on you.

MR. WILLIAMS: Yes. That would be my present interpretation and, on this point, I might mention again that it seems to me that something of the same situation applies in the case of the library when it requests materials on interlibrary loan -- that it is, in fact, an agent for the user who wants it and that there may be some conflict here between 108(d) and 108(g)(2) in this respect.

JUDGE FULD: If those are all the questions, Mr. Williams, thank you very much.

MR. WILLIAMS: Thank you very much.

JUDGE FULD: We will recess for a short time.

(Brief recess)

JUDGE FULD: I understand, Mr. Williams, you have a footnote--or an addendum?

MR. WILLIAMS: Yes. Thank you very much, Judge.

It occurred to me -- and I should have thought of it at the time -- in response to Dr. Dix's question about the future expansion of the Center, its operations, or the expansion of similar kinds of operations, that one of the things that seems to me very possible, and very useful in the context of dissemination of copyrighted information -- and new technologies, that is such central institutions can be enormously helpful to the publisher and to the author for some of these less frequently used materials that, by the nature of the costs and use, it may not be practical to

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print for distribution in large quantities

facilities such as these, centralized and organized for fast response time to users' need, can be of help, both to the scholar and to the publisher, in making this material available quickly, on demand, under a more efficient and sure system than is now available.

I think this is both a very real possibility, and one that is in everyone's interest to explore.

I simply wanted to get that on the record.

JUDGE FULD: Thank you very much.

MR. WILLIAMS: Thank you, Judge.

JUDGE FULD: Our next guest is Mr. Thomas D. Gillies, who has had twenty years of experience in library activities. He is a Director of the Linda Hall Library in Kansas City, Missouri. This library is a major center for the dissemination of photocopies of scientific and technical information.

Mr. Gillies will tell us about the operations of the library, and the economics of operating the library's lending operation.

MR. GILLIES: Thank you very much.

The photocopying activities of the Linda Hall Library for scientific and technical materials

By

THOMAS D. GILLIES, DIRECTOR

MR. GILLIES: I should like first, I think, to

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define what we are as a library, for you.

Herbert Hall was a Kansas City grain broker. His wife was Linda Hall. They established a trust which, after their deaths, would have as its sole purpose the establishment and maintenance of a public library.

The library must be on the 14-acre plot where they lived, and it must be open to the public. Beyond that, their restrictions were not great.

Mr. Hall's will did appoint a Board of Trustees.

He died in 1941; she had pre-deceased him by three years.

The Trustees called upon some well known American librarians to survey the area and recommend to them the kind of a library that they felt would be most appropriate. On the basis of those consultations, the Trustees decided that the library would be limited to the fields of Science and Technology, exclusive of clinical and surgical medicine.

All of the other areas of Science and Technology would be added to our collection, but not medicine.

They further decided that it would be established as a Reference and Research collection -- not a circulating one. After some delay, the library was opened in the Spring of 1946.

In 1947, it acquired, by purchase, the library of the American Academy of Arts and Sciences. That acquisi-

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tion was strongly determinative of the kind of collection and the kind of service that would be developed and maintained.

Probably the most potentially determinative phenomenon since then, for us, was the Tax Reform Act of 1969--by whose rules we are now taxed as a private foundation and this, undoubtedly, will have some effect on the corpus of the trust and, ultimately, on the kinds of things that we can acquire, and the kinds of services that we can provide.

Certainly, we already begin to feel this, not in any very definite fashion, but in projection of what we can and cannot acquire for future use.

From 1946 to 1956, while we still functioned in the Hall house, the library spent most of its activities and energies in collection development. As the collection grew and its breadth was maintained, it became obvious that the collection should be made as widely available as possible. Local use did not then, and would not now, I think, really justify the kind of collection we have.

We began in a very primitive way, seemingly now, by sending out mimmeographed lists of the serials that we had in the collection. After the collection got to a certain size, the mimmeographed lists became unwieldly and we gave them up.

We then sent about to other libraries -- mostly, at that time, academic libraries -- a rather simple list of

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titles currently received, so that orders for interlibrary loans could be directed to us.

By the mid-1950's, there was a sufficient amount of interlibrary loan activity that we found the record keeping extremely cumbersome and, also, having the material out of the library was sufficiently hampering so far as access was concerned, that we began to respond to all interlibrary loan requests by sending a strip of microfilm.

I should not say "all". That is limited to serial and journal materials. Books, we continued to lend as most libraries do.

Subsequently, of course, we added the option of photocopying to the microfilm and, for these copies, we began to levy fees.

Our fee structure has changed only once, and that was last year, we do charge 40 cents a page for photocopies, with a minimum charge of $2.00 for an order -- not for an article, but for an order.

Microfilm we provide at five cents a page, with a dollar shelf charge and, again, a minimum of $2.00 an order.

Subsequently, after mid-1950, we did arrive at another system for publishing on an annual basis, a "holdings list" of our serials collection. This we continue to do. It is a manually produced list, but it is not a horrendous task

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for us to do it--once a year. This is distributed fairly widely, both nationally and internationally, and, with that use, and with the increasing size of the collection, we have become, to some extent, a national and even an international resource.

We have approximately 30,700 titles in the collection. About 15,000 of those are current. That is roughly half -- not quite, but almost.

Early on, late in the 1940's, we had begun to serve as a resource library for an abstract service called Applied Mechanics Reviews. We allowed the editorial staff of Applied Mechanics Reviews to put a note in the front of each issue that the Linda Hall Library would provide, for our usual fees, copies of any articles which had been abstracted. This was more optimistic than it should have been. We were not always able to get all of the articles abstracted.

We had many of them already in the collection because they were pertinent, In any case, we added all that we knew that the editors were adding to their abstracting service. They had agreed that they would send to us all of the journals, that they abstracted from, which we did not have in our collection. It sounded ideal from our point of view.

Unfortunately, they regularly cut out the articles they were going to abstract to send to their reviewers

and sent us what was left -- which is precisely what we did not need!

However, it took us a little while to discover this. Once we did, we began to use these just as methods of acquisition. If we got a mutilated issue, we knew there was something about it that we needed.

And it was a way of trying to expand our own library holdings.

I cite this example to you because -- not the mutilation, but the idea of an abstract service backed up by a library collection -- because it seems to me a very significant form of information transfer--if it can be made to work.

We still serve as a Resource Library for AMR. We do not have everything that is abstracted in it, but we have virtually everything--or we can make appropriate referrals to other sources for those things which we do not have -- usually government-report literature of one sort or another.

We had also, from early stages of the library, reported our holdings, regularly, to the editors of Chemical Abstract, so that the journals and other serial material which we have and which was being abstracted by Chemical Abstract were available through the codings which they use in their lists.

This again, has been a useful means of acquisition

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for us.

We do not, by any means, have everything that is abstracted and being abstracted either from books or journals, but those things within our subject area that we have repeated requests for, that are in Chemical Abstract, we find appropriate to add to our collection. So these have been acquisitions devices in response to major abstracting services.

The use of our collection which I can cite most easily--based on some detailed statistics for the year 1974--is pretty much in contrast to what Mr. Williams told you this morning about the use of the Center for Research Libraries, and what I think Mr. Line will tell you about the use of BLLD this afternoon.

Before citing these statistics, however, I should point out that they are incomplete--for the purposes of this Commission. They were compiled for quite other purposes; mainly whether we would retire some materials to less accessible stack areas, and whether -- if cancellations became necessary -- we would be able to tell which journals we could most easily do without.

However, they are complete sets of statistics on all of the journal use for a given year. That was not a sample. We have sampled, since, for 1976, but the statistics are for 1974, based on the complete collection; and our copying

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volume increased by about 7% in 1975 over 1974, but has subsequently dropped back to just about the level of 1974.

This, I think, reflects the fact that we raised our service fees in September of 1975, and it has been just enough to make that difference.

Indications are that our total copying for 1976 will substantiate pretty much the patterns of 1974--even as to titles which we have specific statistics for. There will be variations, of course; but I think they will not be great.

In 1974, we copied just over 56,000 articles--from both journals and books. To do it, we used 6,500 serial titles -- roughly a fifth of the collection -- and 2,700-some books.

Of the books used, at least 75% were conference proceedings. I say "at least" because these statistics were compiled after the fact, and it was not always possible for the compilers to identify a "Proceedings" volume if it was distinctively titled. But of the monograph use for copying purposes, the conference or symposia proceedings -- which are most comparable to journal articles, so far as form of publication is concerned -- are by all odds, the most frequently used.

The other forms that make up the rest of our copying statistics are from patents, engineering specifications, Federal documents, and things of that sort.

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There are some specifics that we do know about general use of the collection in 1974.

29-1/2% of the items used, were used only once.

53% were used three times or less.

Almost 80% were used ten times or less.

MR. LEVINE: How do you define items?

Is that serial title?

MR. GILLIES: It is serial title in this case, yes. I should not have said "items", as a matter of fact.

When I say "item", I am merely talking about a copy of an article, and this is a title that is used only once. The title is not for any given year, which is not clear in our statistics.

Now, these uses, it seems to me, substantiate some of the things that were said here yesterday, and which Mr. Williams said about the possibility of an informal kind of publishing through abstracts for later copying use. I would call to the Commission's attention here, a device used by the all-union Institute of Scientific and Technical Information (VINITI) in Moscow, which does just this sort of thing through its major abstracting service.

It abstracts journals and books, just as ours do, but it includes, in those abstracts, also, what it calls "deposited manuscripts"; these things that have some peer

review or referee-ing. They are acceptable to at least some measure of the same degree that a refereed article or scientific journal would be. They are not printed. They are abstracted in Referativnyi zhurnal, and are available from VNITI in response to direct requests -- not easily for most American libraries, I think. They would ignore most requests from this Country. But, within their own Country, these articles -- deposited as manuscripts -- are available and have been made known through the abstracting service-- which is a very large and comprehensive abstracting service.

Now, back to our own use for a moment.

Of the most heavily-used titles in our collection, there were 923 serial titles from which we copied more than fifteen times in 1974. We have not a list of those 923 titles -- nor of the various uses of them specifically, but we did want to know which titles were most frequently used, and so we more or less arbitrarily took the figure of 80, and the titles from which we had copied 80 times or more in 1974, we compiled into a list which we ranked by frequency. It would be easier for me and I think, perhaps, for you, if I simply distribute to you a set of those titles which are of not inconsiderable interest.

The column on the right indicates total copying use in 1974. The parenthetical figure just to the left of that column indicates the number of uses for articles

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dated before 1970.

By sheer chance, our statistics were divided from 1970 on, so it does cover the five-year period, although we did not know at that time that the five years would be such a magical number as it turned out to be.

Now, obviously, to us, the places of publication of these titles are of considerable significance.

Twelve of the titles out of the thirty-nine are published in the United States; ten are published in Japan; five in Great Britain; and five in the Soviet Union; three in Germany; and three in the Netherlands; and one in France.

Had we carried this through the whole 923, I feel reasonably certain that a number of Eastern European Countries would have shown up in this list as well.

Now, obviously, some of the titles on the list reflect use peculiar to the year for which the statistics were compiled.

For example, Plating rates a high usage on that list. I think this can be credited almost solely to the fact that during 1974, we were doing a high volume of copying for the Center for Scientific Documentation of the Argentine National Council. Their program has ceased, or they tired of our services, or something. They could not pay their bills -- another problem that they had!

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Well, after they mounted up for twelve months, we decided that we should do something!

So that usage has dropped off in 1975 and 1976. Actually, I checked for 1976, and it (i.e., Plating) has -- from a sample -- dropped clear down, so that it would not even be on the list.

However, from the same sample that we have done for 1976 use, the two titles at the top would remain in that place; the first one being Soviet and the second one being Japanese. The only competitor for the Chemistry Letters -- which is a Japanese publication -- would be Nihon kagaku zasshi, , which is also a Japanese publication. So the situation did not much alter.

Now, of the copies that we supplied in 1974, they were sent to 1,701 requesters. The distribution of those requesters to type of institution -- and this distribution is without regard to whether they are in domestic or foreign locations: Sixty-six were from miscellaneous agencies--which I will not try to identify--but they include public libraries; private research institutes and abstracting services; and other kinds of institutions.

Ninety were from individuals.

One hundred and seventy-two were from governmental agencies.

Three hundred and eighty-one were from academic

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institutions, and 992 were from industrial agencies -- usually an industrial library.

Unfortunately, I do not have figures for numbers of copies as related to the number of institutions or type of institution. If I did, I feel reasonably sure that the use of our collection by governmental agencies is considerably more, so far as copies are concerned, than that of academic institutions. We get occasional requests from academic institutions -- usually for specialized kinds of materials not widely held. But we have some real volume users in governmental agencies and, in connection with your discussion yesterday, of surveying--or the possibility of surveying non-library use of photocopying-- I would strongly urge you to consider the governmental agency as well. As I say, they are, in a number of cases, volume users of our collection for copying services.

Our 1976 sample of use indicates that about 18% of our copying is from 1976 issues. Roughly 63% is from issues dated '72 through '76. The remainder, obviously, are more than five years old.

Of all of the copies we have made within the sample -- which is a 7% sample and I think a reasonably valid one for this year --15% were of Soviet publications and 7-1/2% were of Japanese publications. So that the pattern, in this sense, continues to obtain, and I think

it will.

Now, mechanically, our operation is relatively simple. Bibliographically, it is not so. We feel it is our responsibility - - partly as a means of exploiting the collection; as I say, if we did not exploit it in response to long distance use, we would be hard put to justify the collection in its location on the basis of local use.

We verify references to the total extent of our bibliographic resources and of our personnel resources -- which are considerable -- along these lines. This is the expensive part of the operation. It is also one which we feel an obligation to do, in part, because our users of these services frequently do not have the resources to do them, themselves.

We do not, for example, try to verify to the same degree a request from a major research library, a university library, if it has come to us and is, obviously, erroneous, as we do for a small institutional library which simply does not have the bibliographic resources to support a search through national or specialized bibliographies.

But, in part, we do this, as I say, as a service. If we don't have the thing -- once we have verified it -- we try to refer the user to another library

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that we know does--or that we can identify as holding the journal. We do it in part for our own acquisition purposes because much of what we are asked for that we do not have has recently been abstracted in the scientific abstracting services and we almost certainly will be asked for it again. It is cheaper for us to have searched for the item and ordered it and, at least, have a record in the order file, than it is to search for it each time a request for the work comes in. It is simply a matter of acquisition. There are a great deal of errors in scientific bibliography -- not through any malfeasance on the part of the compilers of abstracts or indices; simply that there are errors in citations. These citations are perpetuated in future citations. This is much more virulent now than it was before the Computer, because the computer takes a citation as it sees it, without any editing-- an abstracting service frequently does not -- so it is perpetuated forever.

For these reasons, again, we do make an effort to identify citations if a citation does not seem clear to us, or is one that we cannot find easily in our own records.

Now, that is essentially what I have to tell you about our services. I think that if there is a National system for reproduction of articles or papers -- in whatever form they are issued or published - - some consideration must be given to the kinds of things that we do copy in

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volume, and to the kinds of agencies we service which, as I said, are largely industrial and I think, in spite of the statistics, the second group would be governmental rather than academic--and, also, to the kind of bibliographic support which we try to give that copying service, which we do provide.

Now, may I answer any questions?

MR. NIMMER: Our memorandum, from Mr. Frase of his discussion with you, Mr. Gillies, indicates that you said that if you were required to pay royalties you could not stay in business, because of administrative inconvenience.

Is that accurate?

If so, would you expand on that?

MR. GILLIES: It is accurate, I am sure.

Perhaps I should modify it slightly, rather than expand on it--if I may.

We have been pretty much dedicated, since the start of our copying services, to keeping them as simple as we possibly could. We do not accept deposit accounts. We do not do bookkeeping for other agencies. We simply send out an invoice with the item covering our service charges and, because we have kept it as simple as we can, I think we have maintained a certain effectiveness that we might not do if we complicated our own procedures.

If a system for royalty collection were

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sufficiently easy to administer, then I see no reason why we could not live with it; but this is, really, the crux of the matter. This is what I intended to convey and did not, I am sure. How it would work for the volume of foreign title copies that we make is not at all clear to me, and this is one of the reasons why I wonder how easy it would be to manage.

MR. NIMMER: Is your concern with record keeping, or the necessity of getting consents, or difficulty in finding the correct persons to whom to send the money, or what is it?

MR. GILLIES: No. I think our reservation would be about the record keeping.

MR. NIMMER: In other words, you are assuming a compulsory license. It would not be necessary to get consent in advance, or, necessarily, to seek out the proper parties who might be entitled to monies--but those sort of problems, presumably, would not arise if there were compulsory licensing. But record keeping might or might not be necessary.

MR. GILLIES: Yes. Of course, the compulsory licensing system, I assume -- again, I don't know, would involve a fee paid by us at the time we subscribed to a journal. If it worked in that fashion, it would not be much different from what we do now when we pay an institutional

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fee for many journals, which is five times, or even seven times what the individual is charged. If it were done in that fashion, it would be simple enough for us -- so long as we could continue to afford to pay a fee.

If we had to divide up the collection into those which we have paid the fee for, and those we have not paid the fee for, then I think we would have some complexities which would be very difficult to deal with. And I think we would almost certainly have to say that we could not do that. We would have to drop subscriptions rather than have them available for local use, but unavailable for copying use.

JUDGE FULD: Mr. Perle?

MR. PERLE: Has anyone every questioned your right to make these copies or abstracts?

MR. GILLIES: Not directly to us.

MR. PERLE: If this is not an embarrassing question: Have you, within your own organization, considered the copyright aspect of what you are doing?

MR. GILLIES: Yes.

MR. PERLE: What conclusions did you come to on that? You can take the "Fifth" if you want to!

MR. GILLIES: No. No. That is all right.

We have become increasingly careful over the years about how we responded to some kinds of requests.

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At the outset, this was a simple device and it looked like an easy answer to our problems, and we copied in response to almost anything. Then, as we looked more carefully at what "fair use" might or might not mean, we have stopped responding to multiple requests from the same issue, for example. We never have copied whole books, although we have, sometimes, copied substantial parts of books. So that we have assumed that we were operating within the frame work of 'fair use' and, in the past year, we have even begun to limit our copying services along the lines that we thought the guidelines would take when ultimately written.

MR. PERLE: When you turned down a request of someone because you felt that you should not fill it, what sort of response did you make?

MR. GILLIES: Either that we could not copy this under what we understood to be the terms of "fair use", or, in another case, if it were for two copies from the same journal issue, that we did not feel it was appropriate for us to copy two articles in response to this request--or from a given request.

MR. PERLE: You used the term "fair use":

Is there any frame of reference in copyright in making a response?

MR. GILLIES: I would say "Yes". I think we would have said -- I don't remember exactly what the little

form that we use says, but it does refer both to copyright and fair use. In just what juxtaposition, I am not sure.

MR. PERLE: Thank you.

JUDGE FULD: Are there any other questions?

MR. FRASE: Mr. Gillies, I am sorry Commissioner Wedgeworth is not here this morning because he is going to Moscow about the middle of next month with a small group of librarians. I think he would be interested in your remarks about the all-union Institute of Scientific and Technical Information in Moscow. I will bring it to his attention when I have the opportunity to do so.

What are your costs per transaction?

MR. GILLIES: I cannot tell you what our total costs are, because there are certain parts of them that we have never considered. We have not ever considered what our bibliographic search time is; or how many different people may have been involved in the search.

Often, it is not just the librarian in charge of interlibrary loan, but it is various people with either subject or language specialities that may have been drawn in; and sometimes these are fairly expensive.

Just the mechanical charges of clerical help, in processing requests,of the entire photo lab personnel, and Xerox rental charges, and supplies and postage, and so on, amount to about 97 cents per article. Around that. Up to a dollar,

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if that is easier, because our statistics on this score are not that precise.

MR. FRASE: You must use a low postage rate! A library rate.

MR. GILLIES: We use library rates, unless we are specifically asked for First Class, in which case, we charge for First Class postage, except for over-seas orders, which go by air mail, at our expense.

MR. FRASE: I gather, if you use library rates, you must get a reasonable service on it, as compared with First Class.

MR. GILLIES: So far as we can measure it, our experience is there is not much difference between it and First Class!

MR. FRASE: What kind of delivery time is there to your, say, East and West Coast clients?

MR. GILLIES: About one week.

MR. FRASE: From the time you dispatch it?

MR. GILLIES: From the time we get the request.

Now, if the item was off the shelf at the time -- and that happens frequently, because a lot of our requests are in response to recent issues of abstracts -- or, if the citation is in error in some measure, it would take longer than that.

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MR. FRASE: Do you see any difficulty in your operation with the certification arrangements which are set up in the guidelines?

MR. GILLIES: The only one that has occurred to me, so far, is that which will obtain in connection with telephone requests.

It is not clear to me whether a representation in this situation can be verbal or not. If it cannot, then the telephone requests -- of which we get on an average of 12 to 15 a day -- will be somewhat inconvenienced.

MR. FRASE: Would you have any impression as to how the guidelines might affect your business? That is, how many of your customers would run into the point where they would not be able to order more copies?

MR. GILLIES: I have nothing but subjective evidence here. My guess is that a few of the industrial and governmental agency users will, also, be inconvenienced. It may be more than an inconvenience! Perhaps that is too modest a term. But there are some, I feel sure, who order from us regularly more than five copies in a given year. We have never monitored this, so I cannot actually say that that is the case--but I have that impression.

MR. LACY: You mentioned, earlier, that a great many of the people -- I guess it was not you; it was Mr. Williams -- a great many people who already subscribed

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to the journal but, for one reason or another, ordered a reproduction from a central source. Do you have any impression whether industrial and government users who order them frequently are doing so because they don't have the journal or, perhaps, it is just that a researcher in the institution, using the abstracts, has found it convenient to check off a whole bunch of abstracted articles, and order them in one batch from you--even though the journals may be in the institution's library?

Do you have any notion on that?

MR. GILLIES: From the industrial and governmental agencies, I would say, generally, that they do not have subscriptions to the material--given the kind of thing we are most frequently asked for. I am sure there have been instances of the reverse, also, but I would think, in our case, that that is not likely.

MR. LEVINE: Do you now carry multiple subscriptions to the more heavily requested serial titles, or is it usually your policy to have only one subscription?

MR. GILLIES: It is our firm policy to have only one subscription, or one copy, of anything we buy. There are two exceptions to that:

One is Science, and one is Scientific American, simply because they are heavily used on the premises and, for preservation purposes, we have a second subscription.

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Except -- I should modify that, because the record should show we do have multiple subscriptions. We serve as a kind of acquisition agent for our exchange partners, mostly in the Soviet Union, Japan, and Eastern Europe, and, there, we do order multiple subscriptions to send to other libraries. But in this case, we simply send (on) the subscription; we do not retain it ourselves.

MR. LEVINE: Is it your practice now -- I suspect I know the answer to this -- to put a copyright notice on the reproduction of the article that you distribute, or do you merely copy the article and send it as is?

MR. GILLIES: We do not put it on the article itself--as I understand we will need to do, under the terms of the guidelines. It is so stated on the invoice that we supply with the copy.

MR. PERLE: What is so stated?

MR. GILLIES: That the article may be protected by copyright.

MR. PERLE: Without indication of the name and the copyright notice?

MR. GILLIES: That is right.

MR. PERLE: Do you copyright, or put a copyright notice on any of the material that you generate yourself, such as an abstract?

MR. GILLIES: We don't generate any material

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except the serials holding list.

MR. PERLE: When you abstract something for generating something --

MR. GILLIES: I don't think I understand you. We don't abstract anything.

MR. PERLE: You don't do any abstracting yourself?

MR. GILLIES: No.

MR. PERLE: I thought you did.

JUDGE FULD: Mr. Frase?

MR. FRASE: Mr. Gillies, what would the impact be on your operation if a National Periodicals Branch similar to the BLLD -- which Mr. Palmour and his group are studying -- should come into this?

MR. GILLIES: It would depend on a great many things, I suspect: What the fee Schedule for such a service from a National Periodical Center would be.

If it were less than we could operate on, I suspect our customers would go there -- quite properly.

It would probably affect our acquisitions policy, simply because many of the journals we now subscribe to -- which are not used at all within our own local area -- would not be used, either, for copying purposes. I think we would find it difficult to justify that expenditure.

So that it would have that effect on us.

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For the kind of thing that we copy frequently and which is rarely held -- some obscure institute transaction, and things of that sort -- I suspect it would not have a great effect, but that is not a large volume--as compared with the whole.

MR. FRASE: What is the relationship between your total operating cost, including acquisitions, for a year, and the amounts you recover in charges for photoprints?

MR. GILLIES: We recover in the photocopy charges, once we have taken out that 97 cents, about eight or nine percent of our annual budget. That is an off-the-cuff figure, but I think it is close, too.

MR. FRASE: So, using your figures, if an operation were set up to supply photocopies, and to be a full cost recovery, this would make the charge pretty high, would it not?

MR. GILLIES: Yes.

MR. FRASE: Alone?

MR. GILLIES: Yes. If we tried to cover the cost of acquisition, it would be prohibitively high, I would think, for most institutes.

MR. FRASE: Something in the order of $10.00, on this basis.

MR. GILLIES: At least--given the cost of some of

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our journals.

DR. DIX: I was really pursuing the same thing.

Let me put it another way.

Do I understand your policy, or, even, your philosophy is that you are operating a free public library supported by endowment?

People can walk in from the street.

You seek to recover in these transactions of photocopies, merely the added cost of supplying that service at a distance, in general terms.

MR. GILLIES: Yes.

DR. DIX: For example, I think you said there was 9% left over after some ninety cents, but that does not really cover your service charge. You are not really recovering all that you might, legitimately, under that philosophy.

MR. GILLIES: No. I think that is accurate.

DR. DIX: Those can be very heavy costs.

MR. GILLIES: Yes. They can be very heavy costs.

MR. MILLER: Do you have any feel for the impact on your user community of an added charge for royalty compensation?

MR. GILLIES: My general guess is that, on the major users of our collection -- industry and government -- it would have very little impact. The only thing that I have to judge by is that when we raised the fees last

year, in order to try to circumvent what had become something of an inconvenience for us -- namely, the telephone request -- we put in a charge for each copy provided in response to a telephone call and, apparently, that has had no effect at all. That is a dollar charge per copy.

MR. MILLER: Does your response indicate that there would be some members of the user community who would be affected in their habits by a fifty cent or a dollar increase, going to royalties?

MR. GILLIES: I think some of the small public libraries that use us might be, but this is a negligible part of our service.

MR. MILLER: The academic, do you mean?

MR. GILLIES: Again, while we have supplied copies to a good many academic institutions, I think that is a relatively small number of copies. This is surmised. I don't know this. I think most of those are for items pretty rarely held, and the academic community would probably pay the charge without much difficulty.

MR. MILLER: As a possible user, how many organizations can I go to that will provide your service in the United States?

MR. GILLIES: I cannot answer your question. I don't know. I would think a great many.

MR. MILLER: Does the fact that you do not know,

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suggest that there is not the quality of information in terms of who is supplying these services?

In other words, the market place doesn't even know where it can get this service performed at this time.

MR. GILLIES: I do not know how many libraries -- which have a built-in clientele, such as a university library, for example, -would go to the lengths, or could afford to go to the lengths that we do for bibliographic verification. So the answer to your question, there, is, "I don't know". I don't think the market place knows, either.

There are other libraries which do the same kind of thing that we do. I think, perhaps, you can pursue it a little further.

MR. MILLER: And commercial services, too?

MR. GILLIES: Yes. There are some commercial services that do this, too; some of which use us, in turn.

JUDGE FULD: Are there any other questions?

MR. LEVINE: Just one question.

When you say "academic institutions that request material", do you mean libraries -- university libraries -- or is that directly from a department?

MR. GILLIES: It happens both ways, both from departments, and from libraries, but we have thrown all of these into the academic institution figures. There are some

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departments in universities that are not necessarily close to us -- but are not far. We find that they either send people in to do the copying themselves on coin operated machines, or they request from the department, because they say it is faster than it would be to channel it through the library.

MR. LEVINE: What I was wondering about: I think the figure was something like 990 out of 1,700 institutions that you serviced were private, profit-making corporations, and that figure might, in fact, be higher, because some of the requests are funneled through, perhaps, academic libraries -- information brokers, as Arthur suggested. So that the 990 might not be the answer.

MR. GILLIES: Yes. That could be true. If we would have identified them as information brokers, they would have gone into that count. But if it looked more like the university, I am sure that is where they went.

MR. HERSEY: In your question to Mr. Gillies, did you mean to suggest that the royalty charge of a single article might be a dollar?

MR. MILLER: Oh, no! I just picked a figure out of the air, John. I guess, given inflation, I don't think in terms of dimes and quarters. My lowest unit is a dollar!

If something like BLLD were developed in the

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United States, would there still be a service that could be performed by institutions such as yours, or information brokers? Or would we see the obsolescence of this sort of sub-strata of services which, I gather from your earlier response, is not even fully known by the user-clients at this point?

MR. GILLIES: I suspect that if there were a BLLD available in this Country, we would not become totally obsolescent. Some parts of our collection would be less used than they are now. But I think that there would be (some) things, still. We would have things that the BLLD of this Country did not have, or we might, for certain kinds of things, be able to pursue the bibliographic identification further, and would be willing to do this as perhaps the BLLD could not afford to do.

MR. MILLER: When you say "could not afford", are you saying that in an economic, or a qualitative sense?

MR. GILLIES: Economic.

JUDGE FULD: Any other questions?

(None)

JUDGE FULD: If not, we will recess until 1:15.

The Commission will go into Executive Session for a short time.

(Whereupon, at 12:05 o'clock, p.m., the public meeting was recessed until 1:15 o'clock, p.m., on the same day.)

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AFTERNOON SESSION

JUDGE FULD: Our final speaker is Mr. Maurice Line. He is the Director of the British Library Lending Division, located in Boston Spa, Yorkshire, England.

This institution was created in 1973. It is the central source for dissemination of library material throughout England. It has a sophisticated system for disseminating photocopies, and collecting payments with provision of the copies.

Mr. Line will discuss his experience as Director of the BLLD.

We welcome you, Mr. Line, and we appreciate your presence here.

The activities and future plans of the
British Library Lending Division

By

MAURICE LINE, DIRECTOR OF
BRITISH LIBRARY LENDING DIVISION
BOSTON SPA, YORKSHIRE, ENGLAND

MR. LINE: Thank you. I am glad to be here.

I originally prepared some very brief notes, but in the light of what I have heard in the last two days, I thought I might expand on one of the aspects I thought would be especially interesting to the Commission. I hope my guess is all right in this respect.

May I just correct your introduction in

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one respect, sir?

You said we give a service to England. We do also give a service to Scotland, Wales, and Northern Ireland. This is a fairly sensitive point in Great Britain, and I would not want it to be missed.

JUDGE FULD: We will correct the record!

MR. LINE: The origin and growth of the British Library Lending Division is really very recent. The National Lending Library started in Boston Spa in 1961. They had a,kind of short, pre-history in London. It began almost exclusively with science and technology serials and Russian literature, and was aimed mainly at British industry which was supposed, at that time, not to be reading much of this, and not to be getting hold of what it did want to read.

The development since then has been largely empirical. Some research was done before the place was established, but I think we would regard it as a piece of action research, rather than a series of feasibility studies. I would not like it, however, to be believed that we are not delighted to see annual visits from Americans with feasibility studies on the American situation.

We have a regular research team of five, which evaluates what is done, and we are able to evaluate actual activities and develop accordingly--which I think

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is much easier than trying to determine things in the abstract, and asking people what they want. I think this may have some kind of model for the American situation.

Although our development has been empirical, it has been the decision to set up the Lending Division, and its development, into a service covering all categories of material in all subjects and languages.

These developments have been tested, and verified by objective studies. One of these I did myself--before I was involved in the National Library situation, myself.

This was a study of the automation as applied to the National Library System in 1971 and 1972 and, as part of this, we did a detailed analysis of various patents -- models of interlending -- and the conclusion we came to was that a central service was -- at least in Britain -- a highly cost-effective system, judged by three criteria -- three criteria which we still use and refer to regularly:

Speed;

Satisfaction level;

Cost.

The nature of our operation is as a support system to support the libraries of the Country with materials they cannot obtain, themselves, to serve the requirements of serious study. It is not our job to supply children's books, popular gardening, fiction, or

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things of that nature. But we do consider it our job to serve all serious needs of study.

We try to provide this support system by collecting, for our own stock, those categories of material most in demand, so that we can provide a high percentage of requests from our own stock.

We do this mainly by buying periodicals in all languages and subjects -- rather, irrespective of language and subject. There are some languages, no doubt, in which no sales have yet appeared.

We currently subscribe to 47-1/2 thousand current serials, and we have about 60 thousand dead ones as well.

We buy all English language monographs over a certain level.

We try to obtain all conference proceedings; all report literature; printed music; and some British government publications; and various other categories of material.

Now, as a result of this, and having built up back stocks in some areas as best we can, we satisfy, now, between 84% and 85% of demand from our own central stock. This varies between subjects, and it varies between types of material. Serials in which the Commission is especially interested, I know. For these, we satisfy 89% from our own stock. But the percentage becomes very much higher for

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recent serials. For 1975 issues, for example, we can satisfy 97% from our own stock. We deal with half of the requests we receive the same day as we receive them, and 75% have been dealt with by the day after.

After this, we do have quite a long delay because we get requests which need a lot of detailed checking. We get requests for things that have not yet been published. We get requests for things that look as though they ought to exist and perhaps never have, and never will.

I think we can be forgiven for not supplying these very quickly!

The total demand, now, is around 2,650,000 requests a year, which is between ten and eleven thousand, on average, per working day. Our biggest day was one, I think in March of this year, when we received 18,000 requests; but we expect to exceed this in November--which happens to be another peak month.

We do only satisfy 84% or 85% in stock, which means we have to call on other resources for the rest of the material; and we satisfy a further 10% by calling on other sources.

There are two main categories of these.

The first is a conventional means--of Union Catalogues. We keep Union Catalogues of major collections

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in the Country, and we can provide requesting libraries with locations obtained from these catalogues, and then they pursue it themselves.

Alternatively -- and about an equal number -- we send directly on to special back-up libraries. These are mostly private libraries; or libraries that do not normally lend. They are either very large, or very special -- small special libraries. They include the other copyright libraries. Well, the British Library Reference Division, itself, and the other copyright libraries; the London Library, and libraries of this kind.

We would prefer a back-up library for a serial request.

We would prefer a Union Catalogue location for a monograph request, because the back-up libraries do not lend except as a last resort, whereas for serial requests they can and do supply photo copies. One of the advantages of being part of the British Library, and being linked with the Reference Division, is that they have, of course, a very comprehensive stock of old Humanities and Social Science serials that we can never obtain ourselves, now.

Something like 80% to 85% of satisfied requests are provided in the form of photo copies. We do not, of course, photo copy anything from monographs, at all. We

would be in our legal rights in copying portions of monographs, but we do not normally get asked for portions of monographs.

We do get requests for conference proceedings, and we would copy these, but most of our photo copying is from journals, or journal articles.

Initially, the library started as a lending library, and photo copying was not envisaged, but it was discovered that many of the items we lent were coming back the day after we sent them. It was fairly obvious that they were being copied and sent back immediately.

It seemed to my predecessor rather absurd that this should be happening. It was rather simpler for us to make the photo copy and send it ourselves.

It also meant, of course, that the journal had a higher availability, and was less likely to be on demand and so, from that date on, photo copying has steadily gained ground at the expense of lending.

The demand on the library has increased at a quite dramatic rate. In its first year of operation, I think I am right in saying that we received around 100,000 requests. So in 15 years, it has gone from 100,000 to 2.65 million--which is an enormous increase. This is due, I think, to three main factors.

The first is an obvious one: The growth of

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publications, and the growth of higher education and research in industry.

The second is that a lot of transfer has occurred from other interlending systems in the Country to ourselves, because we have been able to give a rather better service with a high satisfaction rate. I will come back to this in a moment.

There are nine Regional Systems in the British Isles, and the demand on them has remained almost stable in the last ten years. So the increase they would have coped with, otherwise, has undoubtedly come to us, instead.

I am sure, also, that a lot of direct lending between libraries no longer takes place, but is channeled in our direction, instead.

The third factor is that the good service has generated demand--which would not otherwise have occurred. A researcher, if he feels he is going to have to wait, maybe, for weeks for an item and maybe not get it at all, or if it is for a very obscure journal, will just not bother about it--and the library will not bother to apply for the form.

If you have a good comprehensive service, it generates demand, and I think there is a moral here, also, for the States, which I know has been taken account of in planning that, if you did have a central supply service, the demand on this might grow at a very unexpected rate.

My predecessor who developed this system will

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admit to making only one mistake. He grossly underestimated the growth of demand. British demand has been increasing very fast in the past but, recently, it has slowed down. The increase at the moment -- the demand at the moment -- is only 2% higher than at the same time last year, whereas last year, it was 11% higher than the same time the previous year.

This is quite an important point.

The reason for this is clearly economic.

Up to a certain point, as library budgets are constrained, they borrow more from other places, because they cannot buy themselves. Beyond a certain point, interlibrary lending, too, becomes expensive, and they begin to cut back on this, and we do know that many libraries -- especially academic libraries -- are now rationing interlibrary borrowing.

I would expect that the United Kingdom increase will be very slow for the next few years, at least.

I would expect it, indeed, to stabilize in maybe three or four years.

The overseas demand, on the other hand, is now 35% higher than it was last year. And that is increasing at quite a stupendous rate. It now constitutes 15% of our total demand. This will be, in the current fiscal year, something like 400,000 articles supplied, and about 23,000

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loans of books.

I will say a little more about the overseas demand, because I believe it will be of particular interest.

Just over half of this comes from Europe -- mainly Western Europe -- and 47% comes from beyond Europe.

Our largest overseas requester is now the United States of America. Ten percent of all overseas demand comes from the United States.

The pecking order is rather interesting:

United States, 10%;

Spain, 9%;

France, 8-1/2%;

Belgium 6%;

Italy 5-3/4%;

South Africa 5-1/2%;

And so on.

It is a rather strange pecking order which I won't bother to interpret at the moment. I have my own ideas as to why there should be -- Spain, for example, should be so very high; higher than Germany, for example.

Of our demand from the U.S.A., two-thirds now comes through the Center for Research Libraries; a quarter from the National Library of Medicine; and the remainder comes either through the N.T.I.S. or direct from other libraries -- individual libraries.

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I would like to mention, here, that the British Library Lending Division is not merely concerned with other Countries because of its own service. Through the International Federation of Library Associations, we have a heavy involvement in the development of improved international lending. It established, at Boston Spa, last year, an office for international lending; and the aim of this is to promote and develop international lending by whatever means are possible.

Since then, the other things have happened within it. They have had, for two or three years, a program of universal bibliographic control.

My predecessor and myself felt there was no point in having bibliographic control unless you can get at the documents which are being controlled bibliographically. In other words, you want a program of document access, as well.

So we really got Iffler to develop a program of Universal Availability of Publications -- U.A.P. -- and it now seems quite likely Art Iffler will want us to turn our Office for International Lending into an Office for U.A.P.

Now, the relevance of this to this Commission lies in several aspects, I think.

First of all, if you are going to have universal availability of publications, a cardinal principle

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of this must be that every Country must be able to supply to any other Country, on request, copies of its own publications. If you cannot get British documents from Britain, where can you get them from?

If you cannot get U.S. documents from the U.S.A., where can you get them from?

But the fact remains that a lot of Countries are very inefficient in supplying their own documents. I would not wish to be too invidious, but it is a lot quicker to get French publications from Sweden, than from France. And some American libraries apparently find it quicker to get American documents from the British Library Lending Division than from the United States.

This does suggest that if you did have a central supply system it would at least be able to give efficient service to other Countries -- a faster service -- than can be given at the moment.

A second reason why I wanted to mention this is because, with the current trends in Copyright Legislation, I think there is a serious danger that international transmission of documents will be seriously hampered, even if the law within individual Countries is--individually--sensible. Unless these laws are somehow framed with international transmission somewhere in the back of the drafter's mind, there is a great danger that we will get into national chaos

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because it may, for example, be impossible to get copies for one Country because of its particular legislation while, on the other hand, it will be possible to by-pass local National Copyright laws by applying to another Country which does not have similar restrictions--depending on whether the onus is on the copying, or the requesting, library.

So you see the possibility of quite serious hindrance to the international communication of valuable information, if Copyright Legislation does go as some European legislation at least appears to be going at the moment.

It also seemed to me there were some considerable absurdities about some Countries' Copyright Legislation. Again, I would not wish to point to any particular Country, here, but I would like to suggest that a page charge is not sensible. It penalizes the publisher that has large pages and it profits the publisher, in theory, who has only to publish the work with three words on each page, to get far more royalties than the publisher who has treble columns and large folio pages.

It does seem to me that Pages are an absurd measure for any royalty that must be paid--if one needs to pay royalties.

I would like, now, to touch on the economics of a centralized service, because these are relevant to United

States planning and, also, to some extent, to the further-copying issue.

The British Library Lending Division is not intended to save costs of local acquisition. I think this cannot be too often stressed. We are not a substitute for local purchase. We are a supplement to it.

Our aim is not to compete for local purchase, but to be more cost-effective than other systems of inter-library lending, and there is no question at all that we are far more cost-effective than the system of interlending that existed before the National Lending Library came into being.

The system, then, was not inefficient--by most Countries' standards, It was based on the National Central Library, which was a national clearing house, and the Regional Systems that I have already mentioned.

The Regional Systems still exist. They are losing traffic to us. One Regional System recently asked us to do a study of what would happen if all its requests were passed to us. So they made extra copies of all of their requests and passed them to us, and we treated them like actual requests, except that we did not satisfy them. We were able to compare our satisfaction rate, our speed of satisfaction, and the cost of the two systems.

The upshot of this was that we could supply more

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items much faster, and much more cheaply.

What the Regional System will now do about this is up to the Regional System. They asked us to undertake the study; and we merely provided them with the information. They are still deciding whether to follow this through logically, or not.

I merely mentioned this to show that studies are still being made of the comparisons of net worth systems involving cooperation between libraries, and dependence on a centralized service.

I said that we are not meant to save cost of local acquisition. Some studies have been done in Britain -- quite small scale studies -- of the journal subscriptions that libraries have cancelled in the last year or two. It might be supposed -- and, indeed, I think it was suggested here by someone yesterday -- that they might all tend to cancel the same low-use titles. This, in fact, has not happened, because low-use titles are, almost by definition, only taken by very few libraries, and the scatter of cancelled journals is very great, indeed. Very few items appeared more than two or three times on quite a long list of libraries. In fact, most of the journals that were cancelled I never knew existed. I was surprised that they were being graded! They certainly showed a very wide variety.

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I don't think any library has cancelled a journal because the BLLD exists. They have, in fact, spent an increasing proportion of their budget on journals as opposed to monographs and, if anyone should be complaining, I think it should be monograph publishers, who have been very much squeezed out of their market -- the library market -- by journal publishers over the last few years.

We have done various studies, some of which I know the Commission is aware of.

We have produced rank lists of journals and these rank lists have shown quite a high correlation between journals. Journals with high subscriptions and high circulations tend to be those that are most heavily used. The most commonly held journals are those not requested.

This may seem surprising. I think it is partly because a lot of our demand comes from industrial libraries which either don't take what is to be an academic library standard journal, or they do take it and, say, throw it away, unbound, after a year or two.

What we have found through studies in the last few months have high correlation between our rank list, and that of two academic libraries in England -- one polytechnic and two university libraries. Our rank order is very, very close to those.

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I would like to suggest several reasons that favor a centralized system provided it is well designed and planned. I do emphasize this because some plans I have heard of -- not in the United States but in some European Countries' more centralized systems -- seem to me to be the worst of all worlds. It is quite possible to design a central system which is more inefficient than existing systems. One has to try pretty hard, but one Country seems to be making quite rapid progress along these lines!

I think the great strength of the BLLD is that it is a single-function library. Our function is lending. It is not reference. It is not bibliographic searching. It is not lots of other things that most other libraries do.

We can, therefore, organize the whole collection--and all of our procedures--to serve the purpose of lending. We do not have to classify it. We do not need complicated catalogues. We don't need standard binding routines, and so on. And if you do design a building for one specific function, you can design it pretty efficiently through rapid retrieval.

Secondly, one has to have very simple procedures. We do not keep records of loans other than the actual request,which is put on the shelf in the place of the issue.

We do not send out invoices.

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We require pre-payment, and will not accept requests except on our pre-paid forms.

A third principle which we adopt is that of a 90% system. Most libraries seem to be designed on the assumption that the most difficult of all requests has to be satisfied all the time. We work on the principle of satisifying 90% very quickly, and the other 10% are dealt with as exceptions. That may make the 10% a little slower, but it makes the 90% a great deal quicker. I think this could apply to other libraries as well, but it certainly applies to us. Our system is not designed to deal with a very difficult request--or exceptions. These are dealt with, but the basic system is designed around the 90%.

What about the future of the Lending Division?

I have already suggested that the demand will probably level out, as far as the United Kingdom is concerned, and, obviously, the overseas demand cannot keep growing at 35% per annum forever. There will, undoubtedly, be some leveling out of that, gradually, although there is no sign of that yet. But the slowing down in gross British demand does mean we have less need to plan for rapid growth than I thought, a year or two ago, and this, quite frankly, I welcome, because a growth rate of 15% or 20% overall -- which we were having a year or two ago -- was raising quite serious problems of staff recruitment.

Yorkshire is quite a large county, but there is some doubt whether the breeding capacity of the county was sufficient to keep pace with our staff needs.

It is also a rather slow procedure.

We have given some thought to alternatives to the Postal System. The British Postal System is not an ideal system. I don't know of any Postal System in the world that is. But we have given thought to alternatives. We have had a feasibility study undertaken of an alternative system which would be by rail to a series of nodes--and by van, from there.

Well, the feasibility study was done but, in our typically empirical way, we were not very pleased with it. We decided that the only way to find out whether this was true or not was to try it out in practice.

So, at the beginning of this month, we have started an experimental scheme with one region in the Northwest, where we are actually trying this out.

The estimate of the feasibility study is that it would save about a million pounds a year, in National terms, and compete for speed with the Post Office. This remains to be seen. I merely mention this to indicate that if the Postal System did, by any chance, break down, or its

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costs exceeded anybody's capacity to pay them, there are alternatives, at least in a Country the size of Britain.

We have given thought to facsimile transmission -- not as a regular means of transmission, but as a special service. We did some studies on this a year or two ago -- a very small scale study. The results of this show that very few libraries had access to facsimile transmission machines; very few of those that have, have compatible machinery, and very few of those that do have compatible machinery are willing to pay the extra money.

The conclusion I drew from this was that the demand for facsimile transmission will be so small as to not justify it.

There is some request for this, for some libraries. They do claim that the occasional request is wanted very urgently, indeed. And so we may well be trying out a facsimile transmission service for which they would pay extra -- a lot extra -- probably around five times as much as our standard service, and we would see whether they are really willing to pay this for the extremely fast request. But I am sure it would never become routine.

Facsimile transmission has improved dramatically in the last two or three years. They now have very fast machines. I am sure they will, now, come down in cost. But I am pretty sure, also, that they will never compete with the

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traditional service.

One function we already have--which has been brought into Providence by a recent report of the University Grant Committee--is that of a National Depository.

We already act as a depository for libraries wishing to, or needing to dispose of material they can no longer hold. With a great shortage of funds for capital building, libraries are becoming increasingly pressed for space. This is not, of course, just a British phenomena. I have read several articles in the American Library Press which suggest it is happening in America, also. But we have, over several years, been taking in material that libraries do not need. It is not inconceivable that we shall be recognized, not only de facto, but in principle as well, as a National Depository.

This also seems to bear some relevance to the United States situation, because I think there are great advantages in linking a National Loan Center with a National Depository. It means that any library can deposit any material in the British Library Lending Division with a guarantee that, if we do not already have it, we will retain it, and make it available.

This means that any library can dispose of material and know that they can borrow it again--within two, three, or four days.

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This is quite different from the old situation where they might be destroying the last copy in the Country, and so on, but it, also, not only benefits that library because of saving space, it benefits other libraries because it is building up our stock of older material, and making it more widely available.

So I do think there are great advantages in making these loans.

At the moment, requesting is by mail or telex or, occasionally, by computer. I think we shall probably see a great development of the computer requesting. This will be not "off-line", as it is, at the moment, from a Center for Research Libraries and the N.L.M., but on-line.

With the British library's bibliographic data base developing, it should be possible -- well, it will be possible to make this available on-line, so the library will be able to call up its reference on-line from the Bibliographic Data Base. It will check its reference --which will cut out all of these problems of bibliographic checking that were mentioned this morning and before -- and it will, if it wishes to, be able to translate this into interlibrary loan requests.

This gives one a very powerful system, indeed! I am pretty sure that, within a few years, we will see the development of an on-line requesting system.

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To be ideal, I think this will require us to put our own catalogues on-line and, also, our Union Catalogues as well. We are, at the moment, conducting some internal studies on the costing problems of this. But I am sure this will be the biggest development over the next five years or so.

One thing that was mentioned, here, was the reaction of central lending libraries to new forms of journal publication. We have given considerable thought to this. It is all speculative. The demise of the scientific journal has been forecast for a very long time, now. In the 1930's, it was forecast that microforms would take over any moment--and they still have not done so. One regards prophesies of this kind with a lot of reservations.

My own personal feeling is that the scientific journal -- the academic journal, as we know it today -- will continue to be the normal form of communication for material that is going to be used to any extent.

Now, as Gordon Williams pointed out this morning, most articles in most journals are not used to any extent. I think it is very much a question whether the journals will be able to afford, in the future, to make available in published form, material which is only read by four or five people. A publication in black and white, after all, is a very expensive way of reaching four people including,

possibly, the author.

I think, therefore, we shall probably see some deposit of articles in the Center which could be Boston Spa, or it could be a commercial center, or whatever, by contract with journal publishers -- or journal agencies, rather -- deposits of articles which are made available on demand. So one has a central supply resource which acts as a reservoir and distributor of semi-published material.

I think this could, in itself, change the pattern of journal publication. At the moment, the decision whether to include material in a journal is made almost solely in terms of quality. The referee is asked, "Is this article considered to be valid and of sufficient quality in your specialist area?"

The author and the referee may be the only specialists in the area, for all anyone knows!

What the referee is not asked is: whether anybody but himself is ever going to read this!

So journal articles can get published in a way that no monograph article can be published. A monograph publisher has to ask: "Is anybody going to buy this?"

Not just: "Is this a good monograph", but, "Is anyone else interested in this, besides the author and the referee?"

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I think if referees were asked this question, it could well change the pattern. But, if one had a central reservoir, one could build the likely demand into the system. In other words, once the demand for a particular article reached a certain level, then it would be publishable.

In other words, you cannot always anticipate demand; but you can test it, empirically. If it remains in its reservoir unused, well, the reservoir was the right place to put it. If it is used heavily, you publish it and make it more widely available. This is just a personal idea, but I think the concept of journals with high-use articles -- rather than the comprehensive journals we have now, which are a mixture of highly-used, little-used, and totally-unused articles -- I think this pattern may well be changing in the future. But I do stress that these are just my personal views. I think there are a number of ways of approaching this problem.

It may interest the Commission to know that the British Library sponsored, in July, a work shop on trends in scholarly publishing. The papers from which -- the proceedings of which -- will be published, I believe, in a couple of months time, and I think these may well be of some interest to the Commission.

They bandy about quite a few ideas of this kind--

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as well as other ideas--but the general conclusion of this meeting was that the scientific journal is not at an end; that the electronic alternative exists, but is not the policy, immediately; that microform will never be very popular with the users; and that the future will be so very different from the present, that, within the present pattern, there will be shifts. But the basic pattern will not change very greatly.

Well, these were just the conclusions of one seminar at which a number of publishers, authors, and book sellers and librarians met. I have no doubt that other seminars could well come to quite different conclusions.

I ought, in conclusion, to say a little on Copyright.

I hesitate to say much about this, because there is a government-appointed committee setting up, at the moment. It is due to report at any moment. Until it reports, one cannot really say how things will develop in the United Kingdom.

At present, what we do is entirely within either one or the other of two sections of the British Act; one of which deals with library copying, and one with fair use.

We are not only happy with legal interpretations, but we also had correspondence with publishers, and the form of declaration we require from libraries was

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checked with the publishers. And so we are quite happy with the present situation but this may, of course, change--if we get a new Act.

A report, of course, does not mean a new Act. It will be a report, first of all, which we will open for discussion; and I have no doubt there will be continued discussions for quite a long period of time before any decision is made on drafting a new Bill.

The British Library has a working party with the S.T.M. group of publishers. This is an international group of Scientific, Technical and Medical publishers. This has, so far, had two meetings. Well, it is just having its third at Amsterdam at the moment, but I am here, instead.

One of the things it is doing is: It is trying to find out whether photocopying does have any effect on journal sales, and it should be looking at the possible design of a survey, to find out why libraries cancel journals.

I cannot tell you any more than that--other than that there may be a survey which will take place in the United Kingdom fairly soon, as to why libraries have cancelled journals.

One feeling is they cancel because they have no money to buy them, but this is, perhaps, too simplistic a conclusion.

The visibility of libraries was mentioned

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yesterday by Robert Wedgeworth. He made the point that libraries were in danger of being penalized because they are visible--forgetting the huge iceberg that is not visible. The British Library Lending Division is not only visible but over-conspicuous, perhaps; and so publishers have been particularly interested in our activities. I think that is, really, the only reason why so much interest has been shown in our copyright activities. They appear enormous. In the total context of further copying, I don't think they are. But they are very visible.

Well, I have covered some of the things you may wish to hear about. I will be very pleased, indeed, to take up any further points you wish me to.

MR. CARY: Mr. Line, thank you for your very enlightening and interesting survey.

I would like to inquire, really, about two things.

(1) This last statement you mentioned about the publishers: Have they indicated, in any comments to you, or in any way, what they feel about your operation?

MR. LINE: I have seen the Publishers Association -- the British Publishers Association -- evidence to the Whitford Commission on Copyright. This was extremely moderate. It did not suggest there was any serious threat.

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The STM group of publishers, I know, is concerned, and this is the reason this joint working party on the British Library and the STM group was set up.

I do have individual publishers writing to me, occasionally. Perhaps I can cite one example of this, which happened about twelve months ago. This was a British publisher, who publishes five educational journals. He wrote to me and said,

"Dear Mr. Line:

It has been brought to my attention that you may be copying journals. I cannot believe that the British government would support an institution that actually photocopies journals, Since you are subscribing to five of my journals, I would like to be reassured that this is not so."

What I did was to investigate the use made of his journals in Boston Spa. And I replied:

"Dear Mr. X:

I am very glad to be able to reassure you. I am afraid we do, indeed, photocopy your journals, but the total use of all five last year seems to be three copies of all of them, together."

He replied:

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"Dear Mr. Line:

I do not accept your views, but I will continue to send our journals to you."

MR. CARY: The second question I had in mind -- this may be an unfair question. If it is, you don't have to answer it.

You indicated that your lending operations in Great Britain seemed to work out very well. That is the impression I get.

Do you think that such an operation would be successful in this Country?

Have you done any thinking about it, or would you care to comment about that?

MR. LINE: Well, I have done quite a lot of thinking, because I have had to. I mentioned, at the beginning, that we expect and enjoy annual visits from American feasibility study conductors, and they come and ask us for our opinion on this. So I follow the progress of American thinking on this with very great interest.

My own view is that a Central Lending Service would, indeed, be effective. I think the factors of distance have been grossly exaggerated. Most of the delays in inter-lending are not in transmission. They are in the libraries that process them. They are in the borrowing libraries. They may spend several days sitting on the

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request before they send it out. When the order arrives, they may spend two or three days before the requester has it. So long as you have an efficient supply system, the transmission time is only a relatively small problem.

My own feeling is that if you did have a really serious need for very fast requests, these could be dealt with in the same way we are thinking of dealing with them--by facsimile transmission. If only one percent, for example, were very urgent, you could deal with these with facsimile transmission, without undue cost, leaving the rest to take their course.

It has been shown that a week's delay is quite satisfactory, for most users, for most purposes.

I would add a word of caution here. Users do get spoiled! If they are used to receiving things in three days, they feel upheld if they get them in four!

DR. DIX: One of our lawyers should probably be asking this question. But let me phrase it as a layman.

Has the Counsel of the British Library given any thought to the possible legal implications of your supplying copies of material under copyright in Countries other than Britain and, presumably, controlled by the Copyright Laws of those countries as to whether those laws are binding upon you by virtue of various International Copyright Agreements?

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In other words, when you copy an American publication, do you feel bound by the American Copyright Law in whatever form it takes?

MR. LINE: The British Library Board has not discussed this. Dr. Hookwell, the Chief Executive, and myself, have consulted a Copyright lawyer on this point, and we have been reassured that what we are doing is not beyond International Agreements.

MR. NIMMER: May I add a word of clarification on that?

Under International Copyright Treaties, each Country's commitment under the Treaty is simply to treat foreign nationals in the same way they treat their own people. In other words, within Britain, the British Copyright Law is applicable either to American or any other foreign publication.

Here, the American Copyright Law is applicable to British publications.

DR. DIX: Suppose then, this is copied for an American consumer through the Central Research Library--for example.

MR. NIMMER: If the act of copying occurs in Britain, the British Copyright Law applies.

DR. DIX: I am glad it is that way, because it simplifies things.

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MR. LINE: One of my concerns about the effect on international transmission of inconsistent copyright laws is that the Dutch law, as I understand it, could well put the onus on the copying library--not the requesting library. We would not be bound by this; and so the Dutch library could, in theory, obtain from us, without paying royalties for the publisher, items which they could not get from any other Dutch library.

This is clearly wrong! We clearly do not wish to do this. But, legally, we would not be prevented from doing this. It is this kind of thing I can see happening--unless there is some coordination of developments.

MR. FRASE: Following up on this same question: As you probably know, not only are there guidelines for inter-library loans, but there is another provision in the Copyright Act which limits the importation of copies if it would conflict with the provisions in Section 108. So, reading the two together, it seems to me that an American library, in obtaining materials from the BLLD, would be limited the same way as if they were getting copies by inter-library loan from an American library.

Would you agree with this?

MR. NIMMER: I am sorry, Bob. I did not quite get the question.

MR. FRASE: There is a provision in the back

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on the section on Importation that says:

> If the general provision of importing five copies for non-profit purposes is limited by the limitations in Section 108(g)(2)
>
> * * *
>
> It seems to me that the American library borrowing from the BLLD would be subject to the same limitations under 108(g)(2) and the guidelines, as it would be when borrowing from an American library.

MR. NIMMER: I think that is right.

MR. LINE: I took this as being so. I must confess I read this particular section, which I think is 602(a)(3). I read this several times without quite understanding it.

I may not be the only one who has done this, but I took it the intention was to make sure there was not a loop-hole by which they could obtain, from Britain, material which they could not obtain from America.

MR. FRASE: Yes. That was the implication.

DR. DIX: This is your Dutch example of a moment ago.

MR. LINE: Yes. Yes. Yes.

MR. FRASE: Do you have any impression as to whether, in any significant way, this would cut down on your present business with the United States?

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Are there many people going over six copies of articles in a year?

MR. LINE: I do not have enough data on this. Gordon Williams has done more analyses of the requests than I have. I found only one particular item which did overstep this mark--which Gordon Williams did mention this morning. This was a particular journal which had eight or ten requests -- I cannot remember which -- which came from the same researcher at the same time, and this was a journal to which this library was currently subscribing.

I think, in fact, this is a point worth following up a little bit, because it does seem to me that a library is in a difficult position if a researcher should suddenly want eight articles from issues two or three years old, say, of a particular journal. That may be all he wants.

Now, I know the guidelines, or the Act, provide that if the journal takes out a current subscription, immediately, they are allowed to do the copying. But the library may not want to; or may not need to. He may be the only person doing research on this topic. It may be his only need, ever. To require that the library should take out a current subscription of this before the researcher can get hold of these ten articles he needs for research, does seem to me to be unreasonable.

MR. LEVINE: That is not the only alternative,

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though, that the library or the scholar has.

The ability to write and ask for permission is always still there in an unusual situation like that.

MR. LINE: It takes time.

MR. LEVINE: Yes.

MR. LINE: If he needs them urgently -- you see, I was laying the stress on urgency.

MR. NIMMER: Isn't it possible to simply place this subscription? You don't have to start receiving it.

MR. LINE: Yes. But it may not be reasonable for a library to place a subscription which only one researcher happens to want ten articles from.

MR. NIMMER: I thought, later, you were saying that it was a question of urgency.

Are you simply relating time to economic feasibility?

MR. LINE: Yes. He may want those ten articles quickly. That is why it may not be reasonable to go through the normal procedures.

MR. LACY: Another alternative is to go to a library that has it and get them to make a copy. If that is not "systematic" copying, it is all right.

MR. FRASE: If you were starting from scratch having your existing system, would you give any thought to operating from a microform base?

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MR. LINE: No. We have given very serious thought to this, because we have our accomodation problems, too, and it has been suggested to us that it might be cheaper to microfilm stock than to build new buildings. So we costed this. We are publishing the results of this study, and there may be some interest in due course. But the conclusion we came to was that it was between ten and fifteen times as expensive to microfilm the collection -- or parts of it -- as it would be to build extra hard copy storage.

Bear in mind that some of our factors are local. Space in our particular area of the Country is cheap. That fact would not be nearly so great in the middle of a city. But I doubt whether any difference in any of the factors would eliminate this difference, entirely.

One of the reasons why I would not want to operate from a microfilm base is that a lot of requests we receive are, by no means, "perfect"--to put it moderately. They have to be checked against the actual items. Often, the page numbers are wrong; the volume number does not fit the year--whatever.

Checking from microfilm takes twice as long. We would need about twice our stock retrieving--to get the items off the shelves. The actual copying process need not be any more expensive, but it would not be any cheaper, either. If we provided the article in microform, of course, we would

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save a little bit on that but, then, all that would happen as soon as the user got it -- if he were the typical user -- is that he would immediately get it blown up into hard copy so that he could read it properly.

So, for these reasons, we have not thought of this very seriously. If, of course, material is published only in microform, we would get it in that form. We would supply it in that form.

MR. FRASE: Was this costing based on your microform? Putting it in microform from hard copy rather than purchasing it from somebody who might sell you the microform to start with?

MR. LINE: This is, really, "Catch 22", you see. Because of the high cost of retrieval for microform, the only things we want to microfilm are very little used journals which nobody else would be interested in buying in microform. The only ones that are microfilmed are the things that everyone wants to keep in hard copies because they want to read them.

MR. FRASE: Well, I may be wrong, but it seems to me they are available in this country: Microform copies of rather highly used journals.

MR. LINE: But if it is highly used, I should have thought that the library would want it in hard copy--if it can get it. Now, a library may not have

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the choice. The only chance it has of getting a back set is in microform. So I think it would buy the microform copy. There, again, I think you need, very carefully, to consider whether it is cheaper to buy this microform and supply the user with a hard copy from that microform, or whether it would be cheaper to get the item by interlibrary loan, instead.

MR. FRASE: As you probably know, the CNRS Photocopying Center in Paris, uses microform to a very large extent.

What are their costs attached to that?

MR. LINE: They are much higher. For instance, industrial libraries use this in preference to CLRS because it is faster and cheaper.

MR. FRASE: One last question.

I have had some recent correspondence with a colleague in London. She said that she expected the Whitford Committee Report to be extremely late.

You indicated that it might be out soon.

MR. LINE: You have more recent information than I have, sir.

JUDGE FULD: Thank you.

MR. CARY: Mr. Chairman?

JUDGE: Yes, Mr. Cary.

MR. CARY: The old material that you have in your library -- say, material that is more than five years old -- do you have any statistics indicating the frequency of

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use of that material?

MR. LINE: We have -- I have a lot of figures with me. You happened to ask me for the one I do not have with me -- the distribution of demand over time.

I think I have it. If you think you can bear to wait a moment, I think I can provide this one.

I have the figures--but not in a form that makes it easy to interpret. In fact, they are not in percentages. I am sorry. I cannot give you these figures in a form that would be useful to you. But it is about 50%:within the last five years, and 50%: older than that.

One has to be very careful in interpreting these figures. They do not, necessarily, indicate rapid obsolescence. The fact that 50% of the use of a journal is made in the last five years of existence may mean no more than that 50% of that journal was published in the last five years, because the average size of a volume grew very rapidly between 1960 and 1970. And the only reason that the 1970 volume is used twice as much is, maybe, because it is twice as thick.

So, if you allow for this factor, obsolescence rates are very, very much slower than commonly supposed.

MR. CARY: Do you have any policy whereby you weed out old material, or do you retain everything?

MR. LINE: No. I think it is very important --

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even if it is unused--with us, it is more important to have the unused stuff in one place rather than scattered around a lot of places.

Perhaps I can mention one other point here.

I think it was suggested--in someone's presentation yesterday--that if you did set up a Central Service, it would not be much good for old material, for some time.

This is not our experience. We have had pretty good success in obtaining backgrounds of journals that we really needed and, in fact, our success rate for even pre-1900 journals is well over 80%. It is not, in fact, difficult, provided that you have reasonable financial resources to build up back ones, as well as your current ones.

COMMISSIONER WILCOX: This question may have, already, been answered or covered. I apologize for being late.

This morning, Mr. Gillies made some mention of the All Union Catalogue of VINITI in Moscow, and I believe you have access to that.

Is that correct?

MR. LINE: We have access--not directly--to the All Union Catalogue of VINITI. We have access to Russian libraries for library lending.

COMMISSIONER WILCOX: In your experience, do you find the VINITI manuscript depository valuable? And are you able to have access to it?

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MR. LINE: Yes. It is not a large portion. It is valuable insofar as it goes, yes.

One has to bear in mind that once one gets through a certain level of satisfaction, every additional bit you build on would only satisfy a tiny fraction more. Satisfaction right from the start, as I said, is between 84% and 85%. I cannot see it getting very much higher, in fact, partly because we can never go back in time very much. But, the better you are, the more difficult requests people place on you.

COMMISSIONER WILCOX: If there were some deposit of manuscripts some place that you could have access to, on a Country's policy, would that make it easier for you to operate?

MR. LINE: Somewhat, yes. Yet it would not make a dramatic difference, I would not think.

DR. DIX: Would you say a word about your funding?

From page 4 of the figures you have generously given us here, it looks to me as if you receive, from the sale of services, if one will, something less than a third of your total expenditures. The remainder comes from annual government subventions.

I am just trying to go all the way back and,

if you will, find any relationship whatsoever between this funding and the Universities Grants Committee.

I say "relationship". I mean, does one influence the other? Has the Universities Grants Committee decided to cut back on university appropriations because of your availability?

MR. LINE: Certainly not to my knowledge.

I don't think any collusion could possibly be seen here. In fact, libraries have slightly increased their proportion of university budgets over the last few years. They have been having a difficult time, so that any evidence that libraries suffered because of us, I think, must be really completely ruled out.

We do, as you say, recover about a third of our cost. It must be remembered that something like a million Pounds of our six million Pound expenditure this year is not lending. I mentioned that we are a single-function library. I will qualify that. We are the U.S. base for MEDLAR services. We do publish some journals in translation. That is one of the services that we give, as well, which accounts for some of our budget. So the total budget devoted to lending, including accomodation or anything else, is about 5 million Pounds.

DR. DIX: And the part that you do not recover,

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then, from sale of services, comes from which branch of the government?

MR. LINE: The Department of Education and Science.

The British Library Board puts in estimates, and the funds are allocated by the British Library Board--all within the British Library. We are not part of Civil Service. We are a government agency,--a fringe body with the same kind of status as the Post Office and the National Coal Board, and other bodies of this kind.

JUDGE FULD: Are there any other questions?

(None)

JUDGE FULD: Thank you very much, Mr. Line. You have been very instructive!

MR. LINE: Thank you.

JUDGE FULD: If there is no other business or discussion --

MR. HERSEY: I think Mr. Line said, on the subject of obsolescence, that if the experience of American copying is similar, it does suggest that our guidelines -- having left, for future interpretation or development, the issue of materials more than five years old -- may be a serious deficiency.

I wonder whether at some point we should consider trying to take that up and work it out.

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JUDGE FULD: The Staff could give attention to that, yes.

MR. FRASE: We can get some of our own figures on that.

JUDGE FULD: Yes.

DR. DIX: I assume, Bob, that they will take account of this factor that Mr. Line mentioned -- this growth in size -- in pages -- in more recent years. This is a fact that we have overlooked in the past.

MR. FRASE: That is right.

JUDGE FULD: There being nothing else --

MR. LACY: Have we reached any conclusions about the agenda,and the purpose of our November meeting?

JUDGE FULD: I thought we had, yesterday, considered having someone from the photocopying industry appear before us.

MR. LEVINE: I think,perhaps,we will do that in December.

MR. LACY: Specifically, what charge do the sub-committees feel they have between now and then?

JUDGE FULD: The Committee is going to try to have some report in November.

MR. CARY: I believe the Data Base Sub-committee ought to do the same thing.

MR. NIMMER: As one Member of the Photocopying

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Subcommittee--I may very well be outvoted -- I feel it may be a little bit premature to produce something.

MR. PERLE: You can certainly tell us what you have been doing.

MR. NIMMER: I cannot!

MR. LACY: I think the situation is a little bit different: in the sense that that subcommittee has achieved one major thing, which is all that we have devoted our attention to. Only now have we begun to look towards any longer range.

MR. NIMMER: We had one meeting when we were in Los Angeles, where we explored rather widely, possible approaches to take. But I don't think we are ready to report on that, yet. Perhaps in conjunction with our next meeting, we can have a subcommittee meeting at that point and then, during the following meeting, we would be in a position to report.

MR. LACY: Not necessarily report recommendations as to language, but, perhaps, as to lines of inquiry.

urther witnesses.

MR. NIMMER: As to further witnesses, I made a statement yesterday about that. I think that will be helpful in terms of our further report.

DR. DIX: The Committee on Computer Created Works has not met. I think with a little nudging from the Staff

it could meet next month and prepare its report, which I think will be that it finds no action necessary. I think we ought to at least make a formal statement to that effect.

MR. LACY: We are concerned with one sector. Time in the November meeting will be held available for reports by subcommittees?

JUDGE FULD: Hopefully, yes.

MR. LEVINE: I would expect that a substantial portion of it will be.

JUDGE FULD: We can, then, stand adjourned.

(Whereupon, at 3:45 o'clock, p.m., the meeting was concluded.)

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